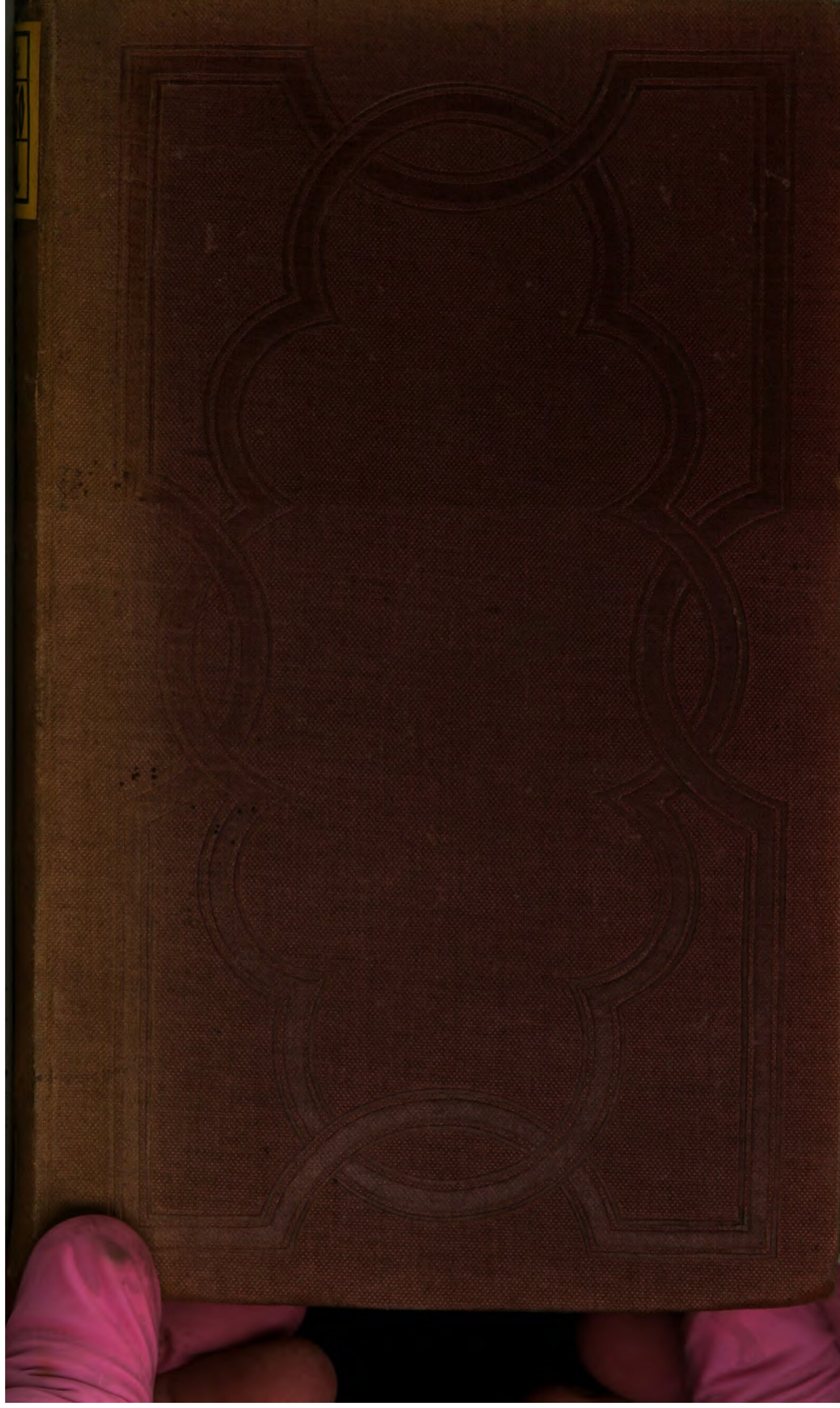




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AN
HISTORICAL ESSAY
ON
THE REAL CHARACTER AND AMOUNT OF THE
PRECEDENT
OF
THE REVOLUTION OF 1688:

IN WHICH THE OPINIONS OF
MACKINTOSH, PRICE, HALLAM, MR. FOX, LORD JOHN RUSSELL,
BLACKSTONE, BURKE, AND LOCKE,
THE TRIAL OF LORD RUSSELL, AND THE MERITS
OF SIDNEY,
ARE CRITICALLY CONSIDERED.

ADDRESSED TO
THE RIGHT HONOURABLE CHARLES WILLIAMS WYNN,
M.P. FOR MONTGOMERYSHIRE.

BY R. PLUMER WARD, ESQ.

AUTHOR OF "TREMAINE."

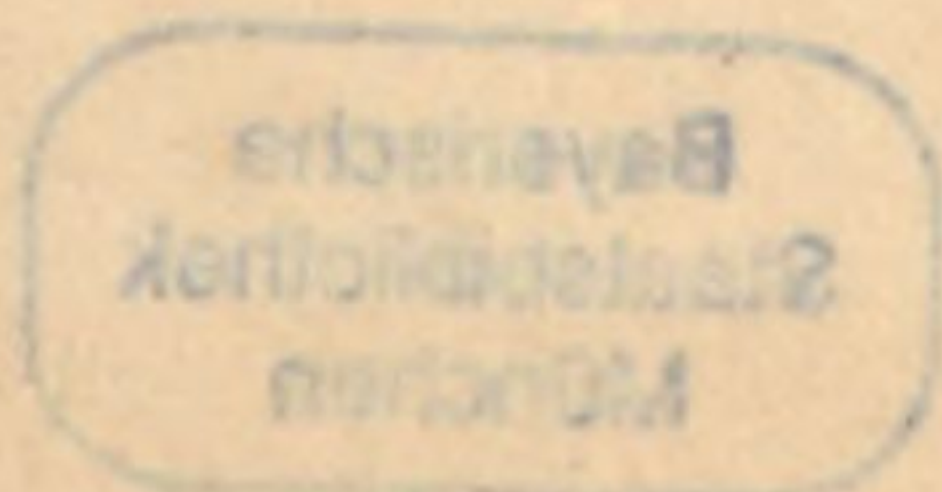
Opinionum commenta delet dies,
Naturæ judicia confirmat.

IN TWO VOLUMES.

VOL. II.

LONDON:
JOHN MURRAY, ALBEMARLE STREET.

MDCCCXXXVIII.



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THE SECOND VOLUME.

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AN
HISTORICAL ESSAY,
&c. &c.

SECTION VI.

DEBATES IN THE CONVENTION.

It is by no means either my intention, or my wish, to tread over again a road so beaten, as that which led to what I may call the finding of the Convention Parliament upon the case of James. The arguments, pro and con, in respect to a king *de facto*, or *de jure*; the expediency of creating a regent, or establishing another monarch in his own right; the differences of opinion between the Lords and Commons upon the many important branches of the original great verdict of the latter, which, at length, they carried: all these are too well known to be more than referred to.

But the real amount of the precedent established;

the inferences fairly to be drawn from it, and the doctrines raised upon it by those who voted it, compared with those of its modern expounders; although in a great measure already canvassed, we may, at parting, be allowed to sum up.

If it had not already been accomplished, as we went along, I should wish to dwell still upon the sources of authority upon which those who assumed to pronounce so mighty a judgment felt themselves empowered to act.

I have called the Convention the bastard of a bastard. I still think it was so. I, at least, under all its metamorphoses, its bolstering, its plastering, its visors, its jury masts, see not the real people, or their real representatives in the two assemblies which gave us (nor am I ungrateful) our present excellent constitution.

There is an old saying, more true than polished, that "no pains will wash a blackamoor white." Ten thousand votes of an after Parliament would not, in my mind, give legitimacy to the Convention as the real people of this land. It is the old story of the world, the elephant, and the tortoise; what supported the tortoise could never be made out.

That the Convention assumed and exercised a power by which (no matter whether true or false) they declared that James had abdicated his throne, which was thereby vacant, and that they filled up the vacancy with William; to which, after some severe contests in argument, and still severer in the field,

the whole nation, at length, submitted; — all this is clear, as well as that we are now bound by it. But that the assembly which did this were the legitimate Lords and Commons of the realm, endowed with powers from the people to do it in their name; or, in fact, that they were any thing more than what they called themselves, a *Convention*, which means merely a meeting of persons who took upon themselves to risk what they did, and trust to their fortunes afterwards; I cannot be persuaded.

To try this, let us suppose that James had succeeded in any of his projected invasions; suppose William, instead of conquering, had been conquered at the Boyne; not only that Ireland, but England, had been recovered, and that James had returned in triumph to London! We have seen what his unexpected return had before effected when, though he had been a prisoner, robbed, insulted, and given over for lost; though his rival with his army was within twenty miles of him, and had even been addressed by the Lords, and all the magistracy of the metropolis to take possession of it, with a promise to support him as their refuge; — yet, in one little day, without arms, without attendants, with no support but his kingly character, he was received with acclamations by the populace, submission by the authorities, and more than the usual portion of respect from his court and council.

Was there any form adopted for this? any rescinding of votes; any solemnity of retraction of what

had been done against him, to enable him to resume his powers? No! he had only to appear, and was king again. Ay! as far as submission went, "every inch a king."

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LONDON

JOHN HENRY LITTLE

PRINTED

AN
HISTORICAL ESSAY
ON
THE REAL CHARACTER AND AMOUNT OF THE
PRECEDENT
OF
THE REVOLUTION OF 1688:

IN WHICH THE OPINIONS OF
MACKINTOSH, PRICE, HALLAM, MR. FOX, LORD JOHN RUSSELL,
BLACKSTONE, BURKE, AND LOCKE,
THE TRIAL OF LORD RUSSELL, AND THE MERITS
OF SIDNEY,
ARE CRITICALLY CONSIDERED.

ADDRESSED TO
THE RIGHT HONOURABLE CHARLES WILLIAMS WYNN,
M.P. FOR MONTGOMERYSHIRE.

BY R. PLUMER WARD, ESQ.

AUTHOR OF "TREMAINE."

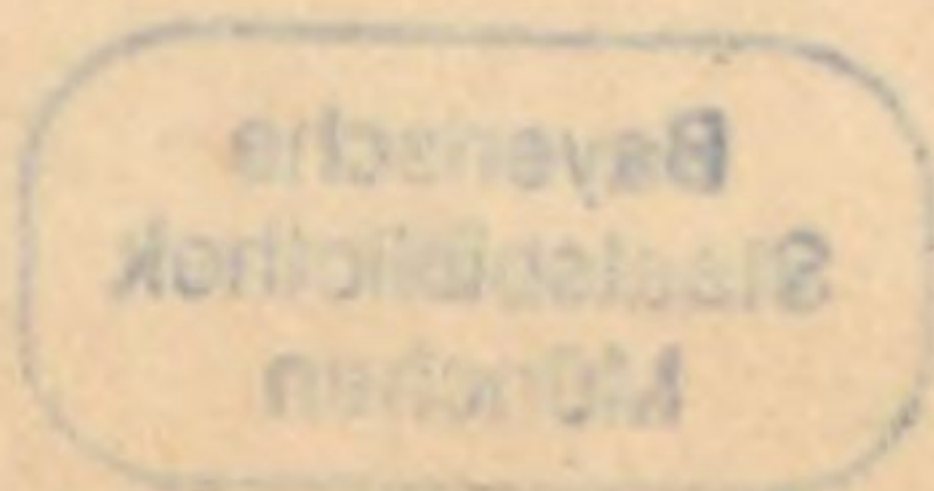
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Naturæ judicia confirmat.

IN TWO VOLUMES.

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IN THREE THE SECTIONS OF

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REPRESENTATIVE HOUSE AND LORDS

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APPENDIX

ADDRESSED TO

LEWIS HUNT HONORABLE CHAIRMAN WILLIAM WYKE

IN A NEW EDITION

BY H. PLEMER WARD, ESQ.

ATTORNEY AT LAW

No. 1.—The first of the two volumes contains

Major Fox's speech on the motion for a vote of

confidence in the government, and of some of the

trials, and the manner in which they were

conducted. The second volume contains

the trial of Lord Russell, and the murder

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SECTION VI.

DEBATES IN THE CONVENTION.

It is by no means either my intention, or my wish, to tread over again a road so beaten, as that which led to what I may call the finding of the Convention Parliament upon the case of James. The arguments, pro and con, in respect to a king *de facto*, or *de jure*; the expediency of creating a regent, or establishing another monarch in his own right; the differences of opinion between the Lords and Commons upon the many important branches of the original great verdict of the latter, which, at length, they carried: all these are too well known to be more than referred to.

But the real amount of the precedent established;

the inferences fairly to be drawn from it, and the doctrines raised upon it by those who voted it, compared with those of its modern expounders; although in a great measure already canvassed, we may, at parting, be allowed to sum up.

If it had not already been accomplished, as we went along, I should wish to dwell still upon the sources of authority upon which those who assumed to pronounce so mighty a judgment felt themselves empowered to act.

I have called the Convention the bastard of a bastard. I still think it was so. I, at least, under all its metamorphoses, its bolstering, its plastering, its visors, its jury masts, see not the real people, or their real representatives in the two assemblies which gave us (nor am I ungrateful) our present excellent constitution.

There is an old saying, more true than polished, that "no pains will wash a blackamoor white." Ten thousand votes of an after Parliament would not, in my mind, give legitimacy to the Convention as the real people of this land. It is the old story of the world, the elephant, and the tortoise; what supported the tortoise could never be made out.

That the Convention assumed and exercised a power by which (no matter whether true or false) they declared that James had abdicated his throne, which was thereby vacant, and that they filled up the vacancy with William; to which, after some severe contests in argument, and still severer in the field,

the whole nation, at length, submitted ; — all this is clear, as well as that we are now bound by it. But that the assembly which did this were the legitimate Lords and Commons of the realm, endowed with powers from the people to do it in their name; or, in fact, that they were any thing more than what they called themselves, a *Convention*, which means merely a meeting of persons who took upon themselves to risk what they did, and trust to their fortunes afterwards ; I cannot be persuaded.

To try this, let us suppose that James had succeeded in any of his projected invasions ; suppose William, instead of conquering, had been conquered at the Boyne ; not only that Ireland, but England, had been recovered, and that James had returned in triumph to London ! We have seen what his unexpected return had before effected when, though he had been a prisoner, robbed, insulted, and given over for lost ; though his rival with his army was within twenty miles of him, and had even been addressed by the Lords, and all the magistracy of the metropolis to take possession of it, with a promise to support him as their refuge ; — yet, in one little day, without arms, without attendants, with no support but his kingly character, he was received with acclamations by the populace, submission by the authorities, and more than the usual portion of respect from his court and council.

Was there any form adopted for this ? any rescinding of votes ; any solemnity of retraction of what

had been done against him, to enable him to resume his powers? No! he had only to appear, and was king again. Ay! as far as submission went, "every inch a king."

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years last past have hitherto deprived us of any such opportunity whereby we *might express our loyalty and allegiance to his Majesty*: we, therefore, the Lords and Commons now assembled in parliament, together with the lord mayor, aldermen, and commons of the city of London, and other free men of this kingdom now present, do, according to our duty and allegiance heartily, joyfully, and unanimously, proclaim, *that immediately upon the decease of our late sovereign lord King Charles, the imperial crown of the realm of England, and of all the kingdoms, dominions, and rights belonging to the same did, by inherent birth-right and lawful undoubted succession descend and come to his most excellent Majesty Charles the Second, as being lineally, justly, and lawfully next heir of the blood royal of this realm; and that by the goodness and providence of Almighty God he is, of England, Scotland, and Ireland the most potent, mighty, and undoubted King; and thereunto we most humbly and faithfully submit and oblige ourselves, our heirs, and posterity for ever.*

*“ God save the King.” **

Such were the opinions of persons who had many, or most of them, concurred in dethroning their king, proscribing every branch of his family, and ruining the monarchy to its foundations. For, if ever a total subversion of one constitution and the setting up of another had been completely effected, and all return guarded against by the most solemn and deliberate acts, it

* Chandler, i. 10.

surely was this. It was fortified, too, not merely by a ten years' acquiescence and obedience by the bulk of the nation, but by two great and successful wars with Scotland and Ireland; by the most lawful adjudications of courts of justice; the change of the whole magistracy, and the relentless support of the public executioner.

What then could produce this wonderful change? this return to all the old homely doctrines of the Constitution?

One would suppose nothing but acts equally solemn and formal, rescinding all former acts, and proceeding by some *new* election of the whole nation to recall Charles, and place him upon a throne which would be thus of his own acquiring. Did the Convention then write to him? No; he wrote to *them*; and he wrote as their king, claiming the throne as a right "*which God and nature had made his due.*" *

Did they answer that his right had passed away by a thousand votes of the nation or their representatives, but that they would rescind them all, and elect him anew? No! besides the proclamation, in their own letter to him they allowed his right, acknowledged him their sovereign as if his power had never been interrupted, and hailed his return without any conditions. They began by calling him their "most royal sovereign; they trusted, and, *in all humility*, were bold to affirm that *his Majesty* would not be de-

* Declaration from Breda.

ceived in them, and that they would never depart from that *fidelity* which they owed him, that zeal which they bore to his service, and their constant endeavour to advance his honour and greatness.” *

They disclaimed, too, in the name of the preceding parliament, the violence which had been done to the sacred person of his father, which they laid upon a few *ambitious* and *bloody* persons, not on a parliament which had vowed his defence.

But the miraculousness of the change, as also the evidence that no new election or recall of old proscription was necessary to make him remount the throne, is most pointedly to be collected from the speech to him of Denzill Holles, one of the most active and leading members of the Long Parliament, who began the war against his father, and who, be it remembered, was, therefore, one of the five whom Charles attempted to arrest in person, in the midst of the House of Commons. This great champion of the people, at the head of a deputation of the House, sent to Charles at Breda, addressed him as their *dread sovereign*, said that they prostrated themselves at his royal feet by command of those who sent them, who would all be there in person, but that the duty of their offices and of his service demanded them elsewhere; that never parliament made greater demonstrations of zeal, affection, and loyalty to any of their kings than this; their hearts were filled with

* Answer to the Declaration from Breda.

veneration *of* him; longings for him; confidence *in* him; “your majesty,” he added, “cannot imagine nor can any man conceive it but he who was present to see and hear it, with what tellings out of the soul a stupendous concourse of people heard the proclamation, ‘proclaiming you to be our most potent, mighty, and *undoubted* king.’” Finally, he was the light of their eyes and the breath of their nostrils.*

It may be said that this was all management; that the Commons might have made what conditions they pleased; that the king was at their mercy. No matter: they did not make those conditions; and, without even glancing at the different modifications of the constitution, which had all received the nation’s sanction for ten years together, they received him, with all his prerogatives entire, without any new investiture or solemn abrogation of the votes against his family.

The mode in which the House of Peers, which had been voted useless, was restored, was curious. One morning they found the doors of their chamber open; and ten or a dozen walked in as if nothing had happened, took their seats, and began to vote.

So I hold, it would have been with James, or James’s son, had he conquered a restoration or been

* Chandler, i. 13. The whole speech is such a wonderful elucidation of the vicissitudes of history, that I have set it forth in the Appendix, No. II.

admitted without opposition ; and if so, the validity of the acts of the Revolution Convention would have been not so much destroyed by fresh votes, as passed by without notice, as if they had never been.* Could this have been, if really these acts had been the work of the people at large, resuming their trust, as Locke thinks, or their inalienable rights, as Mackintosh holds? No ! As there must have then been a return to the individual personal sovereignty of every man composing the nation, in order to delegate it to a new family, as these jurists have supposed they did, so if they had chosen to renounce the new family and return to James or his heir, whether forced to it by conquest or receiving him by choice, a *new* election and a previous abrogation of the preceding one would have been necessary.

But with *usurped* power, such as that of the Long Parliament, or such a defective and irregular assumption of it as by a convention to produce a convention such as we have described, no such new election would have been required. The proclamation (say for the son of James) might have pursued the same tenor as that for Charles, and it would have been bruited by the sound of the trumpet, “that immediately upon the decease of our late sovereign lord King James II., the imperial crown did, by inherent

* The steps by which Charles II. *resumed* the throne, (I use that word as more appropriate than *restored*,) it is very material to consider ; for the sake of convenience, therefore, to those who think them worth examining, I have thrown them into the Appendix.

birthright, descend and come to his most excellent majesty King James III."

Had the parliament, indeed, been lawfully convened by James, who alone had the lawful right to summon it, and he had then *really* abdicated his throne, the power of remedying the evil by filling up the vacancy, would have devolved upon both houses, as of course, and they would only have used their power constitutionally and according to precedent; but, in the Convention, which really met on an emergency created by the sword, and unauthorised except by that sword, I see nothing but a *provisional* government, to be afterwards confirmed by the *people*, but not as was emphatically the case, by *themselves*; who thus, as before alluded to, were the tortoise that supported the elephant that supported the world but was itself supported by nothing.

Do I say that we of the present day are not bound to this, by not merely the municipal, but the moral law? Certainly not.

There are two ways, and two only, I think, by which power can be derived from the people: either by their actually assembling and enacting the mode in which it shall be administered; or by long acquiescence and obedience (no matter how the power was acquired) confirming and ratifying it as if it had been originally their free choice.

Of the first, the election of Pharamond to be king of the Gauls *, the creation of the American States,

* He was elected by his army, who placed him on a shield, and

and those semblances of unrestrained elections, by which Bonaparte acquired the different gradations of his power, may be considered as instances. Of the last, almost all the governments of Europe as now derived:—the Carlovingian and Capetian kings of France, who erected new dynasties, and our own line from the Norman and Saxon families, none of whom had any right but of the sword when they conquered the Saxons, the Britons, the Normans. Hence the sentiment of Blackstone, that “the executive power in England is vested in a single person by the general consent of the people, the *evidence of which general consent is long and immemorial usage.*” Hence, also, he says of King Egbert, that he found himself in possession of the throne from an undisturbed possession by his ancestors of 300 years, whether by force, fraud, or election it matters not to inquire. His right must be supposed indisputably good “*because we know no better.*”* As to William the Conqueror, or, as the lawyers wish to consider him, the *acquirer* (for that they say is the meaning of *conquestor*), he had no right from the will of Edward the Confessor (the one he pleaded), because “*absque generali senatus et populi conventu et edicto*†;” and though the Saxon line was held to be restored in the person of Henry II., yet as that made no difference

showed him to one another as their king. But the army was the people, who were all soldiers.

* Commentaries, i. 190. 195.

† Ibid. 198.

in his claim, which was ostensibly derived alone from his Norman grandfather Henry I., the whole Norman title, through all the Plantagenets, seems in reality to have been of the nature of that we are describing, an acquisition, whether by the sword or otherwise it is too late or unnecessary to inquire, because deriving its best force from long acquiescence and regular usage.

Such, if I may be allowed an opinion for all the reasons adduced, I hold to be the *real* source of our present happy government. I say real source because, disguise it as we will and with whatever exertion of ingenuity or semblance of law authority, although we are all bound by the laws establishing the changes made at the Revolution, and although we should justly incur both the guilt and punishment of treason if we warred against them; that they were derived originally either from the people in their collective state or through their legal representatives, is not the fact. The right of the Convention to do what they did is acknowledged by us as we acknowledge King Egbert's, "because we knew no better." Certainly, at the time, none better offered, and it has since been confirmed, as we have said, by usage.

Consent, then, proved by acquiescence *after* the change, is the better, if not the true source of our present constitution. By that consent, so proved we are bound as much as if there had been a polling of the people in primary assemblies, and thence a regular emanation of their power through real and legitimate representation; and I may conclude, as

well as the most orthodox upholders of the legitimacy of the Convention, with the sincere wish “*Esto perpetua.*”

These things being premised, I will proceed, with your leave, to consider the facts stated to have been found and proved by the celebrated vote of the vacancy of the throne, and the doctrines supposed to be elicited from the debates, which led to its reintegration in the person of William.

Of this vacancy, as lawyers, senators, or citizens, we cannot be suffered to doubt; and no man but must hold that it has become a fundamental axiom of the constitution, that James abdicated, that the throne was vacant, that the Convention filled it up, that the nation at large acquiesced, and, therefore, consented, and that we all are bound *constitutionally* to take the truth of these propositions for granted. In our closets, and using our reasoning faculties upon the facts of the history, I doubt every one of them.

Upon the *abdication*, and, therefore, the *vacancy* (for so the Commons argued it), Somers was the leading authority: to him it was confided.

I have attended with the deference that becomes me to the whole of his argument, and all his learned authorities, Grotius, Calvin, Brissonius, and Budæus. But, though his explanation of the word, whether as a lawyer or grammarian, must be granted, as well as that it was quite as good as the word chosen by the Lords, *deserted*, we may still be at issue as to the

application of it to James, and still more so as to the consequences, namely the vacancy of the throne, which Somers drew from it.

To abdicate is to *renounce* : granted. And the renunciation may be by deeds as well as words : granted. By inference as well as direct admission : granted also. On the other hand, the addition to this explanation, by the Bishop of Ely, Turner, was equally valid, nor did, or could Somers, in my mind, deny its validity. The bishop allowed that an abdication might be inferred from overt acts ; but “ I desire to know,” said he, “ whether Grotius, that great author, in treating on this subject, doth not interpose this caution :—‘ If there be a yielding to the times, if there be a going away with the purpose of seeking to recover what is for the present *left* or *forsaken*,—in plain English, if there were any thing of force or just fear in the case, *that* doth void the notion of abdication.’ ” *

I own I look in vain for any answer that was given to this shrewd question, supposing it not denied that James was under force and fear, and yielded to the times when he withdrew, of which all may judge from the account already given. Hence the Continuator of Mackintosh gives the meed of praise he deserves to the bishop, who, he says, “ discussed the question on broad principles, in a tone of good faith,

* Chandler, ii. 214.

which contrasted very perceptibly and favourably with the manner of the Commons." * Nor did any of them even attempt to reply to the forcible illustration of Lord Pembroke, who compared the flight of James to a man who ran out of his house because it was on fire, or a merchant who threw his goods overboard in a storm to save his life.

Old Maynard, indeed, buckled on his rusty armour, and attempted a reply, such as it was. But did he deny that James was under duress? did he assert that he was free when he fled? Far from it: he might as well have held that when he was ordered by William at the head of his troops to quit London, he was free to remain. He, therefore, contented himself with a poor, mean, and quibbling equivocation. He said that as James had caused the troubles which occasioned his withdrawing, by this he had *renounced* his trust, and, therefore, his place was vacant.

To you I need not observe that, to break a trust, and to renounce it, by which the old man wished (though he dared not go so far) to infer abdication, are by no means the same thing. Why did he not at once say forfeit? Indeed, so it was retorted by the Lords; and no schoolboy but must perceive the despicable sophistry as well as cunning of such an answer; and it is matter of grief as well as surprise,

* ii. 315.

that in this glaring fallacy he was supported by such a man as Holt. However, *rem quocunque modo* seemed the motto of our Whig deliverers: they lost their reputation, but they gained their object.

Not content with this, Maynard stooped to another quibble, infinitely more degrading. For the law declaring that no man while living can have an heir (*nemo est hæres viventis*), the old rogue, as Swift calls him, did not blush to argue that as James was alive he could have no heir, and *therefore*, there being no heirs, the throne was vacant.

What can we say to this miserable reasoning—this affront to common sense?—but that the men of enlarged sense on Maynard's own side disdained to take it up.

It was in vain replied that the whole argument of the Commons was, that James was civilly dead, and that the heir succeeded, as if by lunacy or incurable infirmity he was incapacitated from governing.

Another pretence denoting the same poverty of argument of the Commons was, that unless you could point out *who the heir was* there could be none, and hence again the throne was vacant.

To this it was replied, and a question asked, If two persons are in a room, one of whom is certainly a given individual, but which is which is not, for the moment, known, would you say therefore the individual is not there? *

* Lord Pembroke.

To this subtlety was added another, proving still more, I think, the deficiency of logical argument in the Commons.

They conceive, say they to the Lords, that they need not prove the vacancy to their lordships, because they had already admitted it by their address to the prince—to do what? assume the crown? No; to take upon him the administration of public affairs!

So, then, to administer the public affairs in the absence of the king, proves that there is no king at all. Surely it does not require even an inferior schoolboy's mind to refute such a fallacy.

The great difficulties were three:—first, whether allowing the word abdication to be more proper than desertion, it meant *voluntary* abdication or not? To this the Commons never did, and never could be got to reply, though Maynard indulged in vague common places, and the analogies of vulgar advocacy at the bar.

The next difficulty was, how the vacancy, as to all, was necessarily occasioned by the abdication of one? which is expressly made to appear by the words of the resolution, “*hath abdicated the throne, which is thereby vacant.*”

The third, Whether the throne's being vacant, if it was so, meant vacant in regard to James alone, or to his whole family and race?

All these difficulties, we must agree with the Con-

tinuator of Mackintosh in thinking, were occasioned by the *confused* and *illogical* language of the resolution.

Most of the Lords, who spoke very candidly, said, that if the vacancy applied to James alone, they believed their House would soon be brought to agree; but if to his heirs, it would make the throne elective, to which they would not consent.

This was intelligible, plain, and manly on their parts; but in vain did Lord Rochester and others beg of the Commons to explain their own meaning*; the Commons, from design, which did them no honour, shrank from answering it. Not one grappled with the question, but reiterated the assertion of an unexplained abdication and an ambiguous vacancy. Even Somers condescended to an unworthy evasion; he said that to answer what was meant by vacancy *was not in* their commission, for they came there only to maintain their expression in their vote against the amendments of the Lords. A poor subterfuge, and more like a feed lawyer confined to his brief than an enlightened statesman, discussing one of the greatest crises that could befall a nation. At the same time it was a virtual acknowledgment that to answer the question honestly was not in his power.

He added, that if the Lords would agree to the fact, it would then be time enough to explain what was meant.†

* Chandler, ii. 228.

† Id. ii. 238.

Is it not disgusting that these high and vital questions, decisive of the rights of a whole nation, nay, almost of human nature itself, should thus be made a subject of chicanery and special pleading, as if, instead of boldly asserting and demanding the rights of freemen, we were to be *tricked* into them, from a cowardly fear of not being able to prove them by convincing arguments?

In the same spirit Somers relied on the case of Richard II., who had abdicated, but was afterwards dethroned, and the throne declared vacant, on which Henry IV. was elected to fill it. But his case was totally overthrown by Clarendon, who in this, and, indeed, in his whole conduct of the argument upon this occasion, might have redeemed himself from the contempt in which the Continuator of Mackintosh held his abilities.

He showed that Richard's abdication was by a formal deed of *resignation*, and that leaving no heir of his body, the Duke of Lancaster *claimed the crown as of right*.

In this celebrated conference, Lord Clarendon also relied upon the known and admitted maxim that the king could do no wrong. Meaning, of course, what is always meant by it, *legal*, not moral wrong, and that for legal, his ministers, not himself, were answerable. This is surely very clear; yet in the history it is called a *pernicious ambiguity*, calculated to delude kings.*

* ii. 317.

Is that really so? Is the writer prepared to deny that the maxim is constitutional, or to say that it is not even wise? *You*, perhaps, may think it among the wisest known to our laws; being in fact interwoven most essentially, nay almost synonymously, with the greatest of the safeguards of society, the inviolability of sovereigns.

Our boasted statesmen and lawyers, indeed, allowed that the king's ministers, not himself, were the persons constitutionally responsible; but, with the silliness, or rather ignorance of a child, added an explanation, that it was only so where the instances of mis-government were *slight and few*.

Where they got this modification of the rule, it would puzzle the best of them to make out. As it was, its despicable vagueness as an argument must strike, I was going again to say, a schoolboy; but I will say a schoolgirl.

To proceed: Sir George Treby, though, equally with his fellows, he avoided the questions so searching, yet so fairly made by the Lords, spoke loudly enough of the conduct of the king. He said he had abdicated not only by endeavouring to set aside the laws, but was bound by his religion to do so.

This might make his dethronement justifiable, but how it was *abdication*, baffles conjecture.

So also another of his positions. For he did not hesitate to renew the pretension of the Long Par-

liament, that the coronation oath *obliged* the king to consent to such laws *as the people should choose*, which, as the House of Commons are the people's representatives, reduces him to a mere register of their edicts. Need I say that there is no such coronation oath, and that such a construction of the words *quos vulgus elegerit*, was either a gross error, or grosser falsehood. But error and falsehood did not stop here.

The gist of the argument of this great lawyer and pure Whig to prove a *voluntary* abdication was, that James withdrew, not because he was afraid to remain, but because *he did not choose* to govern according to law.

Need I say more upon such a mendacious torturing of the fact?

The chief argument of the Lords against the vacancy of the throne was, that by filling it, it would make it *elective*.

That it did so is one of the points most strenuously laboured by Whig writers, and, as we have seen, scarcely denied by Blackstone; who, we may remember, says that perhaps the Convention might have filled it with a totally new family. Yet this was mooted with vigour by the Commons, even by Maynard himself, whose principles leaned enough to the sovereignty of the people, but who said such a thing was never in the thoughts or intentions of the Commons, who only wished to avoid

the anarchy which would ensue on the vacancy of the throne.

In this he was supported by Sir Richard Temple, Sir George Lee, and Treby. The last contended against the argument that the filling up of the vacancy would make the sovereignty elective, by supposing a case of two children, whose seniority could not be decided, yet one must be the eldest, and therefore the heir.

To fix who should be this heir, could only, he said, be by election; yet this would give no pretence that in common cases, heirs were to be nominated by election. He, however, unambiguously held (and it throws a light upon the whole doctrine of the modern Whigs which we have been considering), that though there were many interruptions in the line of succession, there being scarce three reigns without some interference in Parliament, yet the monarchy always continued hereditary, and not elective.* Advocate as he was for the dethronement of James by virtue of the people's rights, he seems, in his anxiety to guard against the notion that regulation was election, to undervalue what sometimes was urged, that the form of election was pursued at the settlement of the crown on Henry IV.

It is true, he says, that the Archbishop did propose him (*as was usual at coronations*), and he did there actually ask them whether they did choose him for

* Chandler, ii. 249.

their king; but this does not alter his argument that the monarchy is hereditary.

Thus far Sir George; and, as to any argument drawn from the ceremonial of the coronation, I need not to you observe that it is completely answered by the universally allowed maxim of law, that the moment the king dies, his heir is king as much before or without a coronation as after that form is gone through.

Hence I suppose it was that Sir Robert Howard let out the reason why the Commons were so anxious to declare the throne vacant, *in generalibus*, without specifying whether vacant merely as to James, or as to all his race.

“For,” said Sir Robert, “if there is a known heir, could your Lordships have assembled without his writ? or could you have desired the Prince of Orange to take upon him the administration?”

“Pardon me for saying, if there were a known heir, you have all been guilty of high treason.”

Here then was the secret; and in good truth I am not surprised at the fears and wariness of the Commons.

All these difficulties were occasioned by the aversion, either from cowardice or cunning, both in Whigs and Tories, to decide manfully and openly upon the question of the birth of the Prince of Wales; and, in so far, derogates woefully from the merits, as bold defenders of liberty, of *all* the Revolutionists.

It was hence, no doubt, arose that important omission, in the new oath of allegiance, of the emphatic words *rightful* and *lawful* sovereigns, the oath being simply confined to allegiance to their Majesties King William and Queen Mary. The editor of Mackintosh says it was wisely done to leave an opening for real, or an excuse for capitulating, scruples of conscience.*

Perhaps so; but what, then, becomes of the all triumphant, all inherent, and inalienable right of the people to dispose of a government as they please. This was certainly not exemplified by this feature of the Revolution.

Treby points out various instances of interference, to which and more we have formerly adverted †; but there is this defect attending them all, except the instance of Henry IV., that the king, *de facto*, was joined with the parliament in whatever was done.

Nor is the Convention of 1660 an exception; for, as we have shown, there was neither election nor regulation in their operations, not even in the recall of Charles II., who wrote to them *claiming his right* from the death of his father, which was instantly and humbly admitted.

The notion, therefore, that the finding the throne vacant made the monarchy elective was denied by the revolutionists; and, if I cite these particulars, it is only to show, that the construction put upon the Revolution as a precedent, by our modern expounders,

* Vol. ii. 327.

† Supra.

is not the same, but the direct contrary, of that asserted by the authors of it themselves.

Let the disciples of Mackintosh and Price look to it, and demonstrate, if they can, that the principles of any one of the managers of the Conference could, by possibility, have persuaded them that they might have elected Jeffreys or Kirk into the vacant throne instead of William.

Upon the whole, whether in this important conference we look to the meaning of the words discussed, the authorities and cases quoted, or the representation of the sheer facts regarding the position of James, I think, now that passion is at an end, and party feeling out of the question, we shall be forced to admit that the Lords triumphed in the argument.

This seems to have been allowed by Hallam, even in his elaborate and vigorous defence of the Whigs, to which I shall hereafter come.*

* His language is, "In this conference, however, if the Whigs had every advantage on the solid grounds of expediency, or *rather, political necessity*,¹ the Tories were as much superior in the mere argument, either as it regarded the common sense of words or the principles of our constitutional law." *Constit. Hist.* iii. 352.

In the same strain the editor of Mackintosh observes, "The Whigs acted to a much greater extent than they avowed upon the principle *since called* the sovereignty of the people; but the Lords were, of the two, the more ingenious and consistent in their principles and arguments."—*Hist. Rev.* ii. 319.

¹ Necessity we see here can be the insurgent's as well as "the tyrant's plea." What would Milton say to it?

The Lords, also, in what they did contest bore away the palm of manliness, openness, and consistency. The Commons never could explain whether abdication must not, in their minds, mean a voluntary act, free from the influence of terror. Those, therefore, who think that it did (which, I should say, comprehends all thinking men,) must feel that one of the two great findings of the Convention, the abdication of James, was a falsehood. The Commons were equally false, though equally astute, to their purpose, in avoiding to comply with the fair question, whether, though the throne might be *vacated*, it was, therefore, *vacant*; that is, though James might have renounced it, (supposing he had done so,) that, therefore, there was no heir who had a right to fill it. The fact was undoubted, that either the son or the daughter of James was the lawful heir against all competitors. The finding, therefore, that there was no heir at all (which was meant by finding the vacancy) was another prevarication, and a very mean one.

Not one of the managers for the Commons did or could answer Lord Nottingham, when he thus wound up the case of the Lords: — “ You seem to understand your own words to mean less than they really import. You would not make the kingdom elective; and yet you talk of supplying the vacancy by the Lords and Commons.

“ You do not say that the King has abdicated the

crown for himself *and* his heirs; and yet you speak of a vacancy, saying nothing of a succession.

“ You do not tell us what you mean. If you mean only that the King has left the government, and it has devolved upon his next heir, we may agree. Any government is better than none.

“ I desire earnestly to preserve our antient constitution.”*

It is true, by this verdict, they avoided much inconvenience, evaded many embarrassing questions, and stifled many claims that stood in the way of their object; but they did not, after all, deliver themselves from the dangers they hoped to escape by getting rid of a disputed title. That danger they were forced to encounter, and their posterity after them, with to the full as many sacrifices as if they had boldly declared, as Mackintosh would have had them, the right of the people to sit in judgment upon their rulers, cashier both them and their families, and choose another dynasty, or even another form of government.

Some (a very few, and those the lowest among them,) would have done the last; but this would not have suited either William or the aristocracy; and they chose rather to involve themselves in all the intricacies we have seen, and dabble in false pretences, to bring about what might have been better supported by simple truth.

* Chandler, ii. 253. See the whole of this excellent speech.

In resting part of a case, which wanted no such support, upon the scandalous invention as to the birth of the Prince of Wales, they acted with a meanness which covers them with disgrace.

In voting the throne vacant, with the heir standing at their elbow, they astounded, yet must have excited the ridicule of, all thinking, all honest men. I can liken this to nothing so well as to an incident after the Irish rebellion in 1798, related with great humour, in a novel, it is true, but which is so replete with the true original humour, as well as the virtues, of the true Irish character, that all who wish to know Ireland, or, knowing it already, love it, ought to read it.

Some may doubt the story; but I have heard from authority that, though Mr. Lover has engrafted it in his delightful fictitious tale of Rory O'More, it is not itself a fiction.

Perhaps the reader will not believe it, when he is told that the innocent, though rebel, Rory is tried for murdering a man who actually walks into court (during the trial, and proves his innocence; yet the jury insist upon their right to give a verdict, and find him guilty.

When chid for this absurdity by the judge, they say they know he is innocent of the murder; but, having been in the rebellion, it is right to make an example.

They therefore persisted, and the judge is forced to obtain a pardon for the accused.

Just so, it seems, with the Convention of 1689. They find a contract with the people which never existed, but which would have been very decisive had it done so: they state abdication which never took place, but which would have been convenient if it had; and they create a vacancy of the throne, where the heirs, like the man Rory murdered, were in open court, but without which they could not have filled it with William.

Even as it was, the Commons might, possibly, have not been able to overcome the better arguments of the Lords, had it not been for aids somewhat different from the theorems of the logician and the philosopher.

For the logic of the mob, if not expressly called in to their support, was offered, and, according to some accounts, by no means disdained, to bring about conviction in the Lords.

The weapon resorted to was the usual one of a *petition*, got up in the city by threats and violence, with the palpable design of intimidating the Peers. It was carried from house to house, presented to persons in the streets and other public places, for signature, and borne or escorted by the mob to the very doors of the Convention. The prayer, or rather *admonition*, of the petitioners was, in substance, that the Protestant interest was in extreme peril, and could be secured only by the *immediate* elevation of the Prince and Princess of Orange to the throne.

The Prince and his friends were suspected of

having contrived this turbulent movement to overawe the Lords. They defended themselves by showing that they had desired a prohibition of the petition by the lord mayor. But this the Continuator who seems on no occasion to be eager to repel attacks upon the Deliverer, proves to be impossible; for the petition was presented the 31st of January, and the lord mayor's proclamation, dated the 4th of February, states that the prince's pleasure for it was only received on that day. "Thus," significantly adds he, "there was a delay of *five* days, for the terror of being *De-witted* to operate upon the fears of the refractory lords, and almost all the bishops.

But, exclusive of menaces by petition, there were menaces still more cogent of another kind, and from another quarter. King William, impatient, perhaps indignant, at the delay of his object, the crown in his own right, caused it to be signified that he would neither be regent for his rival nor king consort to his wife; or, to use Fagel's emphatic expression, his wife's gentleman-usher. This threat had its effect with some, and a still more strong one with all; for he gave out that, if the Convention did not close their debates, he would leave them to the mercy of James, and return with his army to Holland. The plan succeeded to a miracle. The Lords, who had obtained the victory in the debates, surrendered all the advantages of it in practice. They yielded; and the *bungling* resolution of the Commons became the law of the land.

Is this expression too strong? Consult Blackstone for the effect upon him by the passages relating to the vacancy of the throne.

Be this as it will, whether by terror, or management, or both, the triumphant arguments and scruples of the Peers gave way; and the famous vote of the Commons, with all its errors as to principles, and all its falsehoods as to facts, was accepted by the Lords, and thus became the foundation of our new constitution.

This vote is cited by Blackstone as justifying the legality of the Convention Parliament, which, according to the views I have hazarded, wants no such justification. He seems to think that, having been assembled without writ (that is the king's writ), their meeting could not be defended, except upon the principle of necessity.

In this we have agreed; but the cautious judge goes on to show, not the necessity for assuming the character of a provisional government of a nation standing on its defence against oppression, but of meeting in consequence of the vacancy of the throne, after the abdication of the King.

“For let us suppose,” says he, “that the whole royal line had become extinct, *that* would certainly vacate the government; in which case the Lords and Commons, it should seem, would have a right to assemble and settle the government anew, otherwise there would be no government at all.”

This may be granted; but, though the Lords are always provided by the Constitution, the learned

Commentator had still to point out who were the Commons. They could only be known by being properly summoned by some legally ruling power, and properly elected by the people, their constituents. If not summoned, and not elected, therefore, who is to know them? where are they to be found? The vacancy of the throne, had it been *bond fide*, and not a forced and false construction, would give no right to any set of men to represent the people without the people's fiat; and how that was to be obtained, except by voluntary meetings, as if all had returned to a state of nature, would puzzle ingenuity to imagine. Certainly the farce of the spurious and motley meeting, as played with such applause in the Commons' theatre, by the command of his Majesty, would not confer upon them the rights of the Commons themselves; and Blackstone would be still to seek to find them, in order to bring them within his case of necessity.

As, however, we own all the powers of such a case, we all own that any meeting of *any* individuals, of influence enough to *be obeyed* ad interim, might assume the direction of affairs, subject to the approbation of the people, afterwards given, either by some formal recognition from their various bodies, or by quiet acquiescence and uniform usage; and this, one would think, would meet the exigency of a case of necessity in a more plain and intelligible mode than Blackstone's requisition of a House of Commons, which could not, by possibility, be found.

The judge, however, (still cautious,) required, and very properly, that the throne should be *really* vacant before his case of necessity could arise to justify a Convention, though the Commons' part of it might be ever so regular.

And how does he demonstrate this vacancy in 1689? By the fact, proved by the event? No! *proved by the finding of the Convention itself!*

Here, therefore, with submission, there is an absolute contradiction; for his Convention can only be justified by the fact of a vacancy of the throne; and that vacancy is only proved by the vote of Convention.

And thus I have endeavoured to set in a prominent point of view some of the most important objections which, in reading the history of our Revolution, deprive it, in my mind, of that character of perfection and glory which our Whig ancestors were fond of attributing to it, but which our modern Whig doctors begin to deny. I deny it, too; but for very different reasons. *They* think it did not go far enough: *I* am content with what was done, but think it was not well done; certainly that it might have been *better* done. All was faulty, defective, disingenuous, hypocritical; the hero often dishonest, the actors almost always so. The most important benefits were obtained, but obtained on false pretences, and, as is said, by perfidious arts, as if the sages and patriots who brought it about were ashamed of their principles, or had not courage to act up to them.

Are we not founded, then, in thinking that, if the betrayed King had been commonly firm, he, probably, would have repelled his enemies in the field, as the Tories certainly did in the argument? Upon the whole, it is an ample exposition of the French revolutionary maxim, exposed by Burke, "Get but possession of power, no matter how, and get a subsequent consent to your keeping it, and it makes it as much an act of the people as if they had originally given their consent to what you seized without it.*

This seems to be the real character belonging to this far-famed event: the end was glorious not the means. Success has gilded it, and we take the glitter for gold; but so thinly spread, that one is only astonished at its weathering the storm which, in its infancy, raged above, and below, and all around it.

Certainly we look in vain for anything like unanimity, unity of purpose, or universality of principle, in the debate at the Conference. It seems like the Lucretian philosophy respecting the formation of the world, — a conglomeration of atoms, which fell together by a happy fortuity, and acquired consistency and strength by time.

Still more in vain do we look into it for those doctrines for the support of which Price ventured all his effrontery, and Mackintosh all his genius. If these doctrines ever had place in the minds of the revolutionists, surely theirs was the time and the op-

* Supra.

portunity for producing them. But though the Bill of Rights was full, to display all the rights and privileges of Englishmen, and though the king was removed, and another chosen in his place, the bill and its framers, who had all power to do it if they pleased, were altogether silent, and did not dare even to glance at the power of *cashiering* when they pleased, still less to hold that the monarchy was elective.

To observe this is the more important, because all the different interferences of Parliament with the succession were canvassed. Turner of Esly, one of the ablest of the Tory champions, allows of seven instances; and the cases of Henry IV. and Henry VII. had their full share of notice. Yet nowhere are these modern doctrines to be found as the consequences that flow from those cases. On the contrary, as is well and wisely observed by Burke, "the Act of Settlement itself was cautious not to turn cases of necessity into a rule of law."

At the same time, I am aware that, on such a subject, I should be wanting in duty to its elucidation, as well as respect for two names, highly distinguished by the deepest researches and powers of criticism upon this very point, if I did not give all the benefit that can be derived from them (and that is not a little) to those who may feel interest enough in it to probe the matter to the bottom.

The names I mean are those of Mackintosh and Hallam, whose abilities, and depth of inquiry, have obliged me so frequently to turn aside and encounter them

(I know not with what success). As my shafts, however, are all sped, and it would be inconvenient, perhaps unjust, to myself to alter my course, after being so near home, I have judged it best to consider them apart.*

Perhaps these opinions of mine may startle many, but not you. They may even, I fear, hurt some generous, and particularly young, minds, warm with the spirit of liberty, and dazzled, as I once was dazzled myself, with very splendid theories, very weakly supported. The foundation laid for them has, with me, long given way. We *have* national rights, and we owe much of their development, and still more of their security, to the Revolution. The Bill of Rights alone, though it contained little new, is a treasure so precious, for the security it gave to our liberties, that it would be almost useless, certainly ungracious, to inquire too minutely by whom and how it was brought about. Rather, perhaps, we ought to think of Babouk, and be silent.

But what, then, (I think I hear a constitutional lawyer say,) is the Convention Parliament to be called nothing but the bastard of a bastard? Was it not the true people? Is its solemn adjudication of the truth of all those memorable facts, which they found as preliminary to their final decision that James had abdicated the throne, which was thereby vacant — is all this to be considered as nothing? Can it be not

* Vide Appendix, No. III.

true, when so voted, that he did endeavour to subvert the fundamental laws; that there is a compact between the king and the people, which he broke; and that he *did* all this by the advice of Jesuits, and other wicked people?

To this, these strictures answer, that the *legal consequences* of this vote it is not competent for any one to deny; in other words, that, the throne being *declared vacant*, and King William chosen to fill it, his title cannot be disputed. But, these legal consequences being granted, we may believe as much or as little as we please of the propositions on which they were founded. We may believe or not that James actually abdicated; that the throne was, therefore, actually vacant as to his family; that there *was* a compact between the king and the people, or even that Jesuits are wicked persons.

All these may be true or false in the abstract; but neither their truth nor falsehood, any more than any other truth or falsehood, can be proved by a vote in parliament. The credibility, therefore, of these questions, although they have become part of the law of the land, is left just where it was before this memorable vote; which no more binds our mental belief than the internal religious faith of the soul is bound by the infallibility of popes, or the authority of general councils.

And so much for the amount of this celebrated precedent, from which have sprung so many warm theories, so many violent struggles. So much, also,

for its real character, and the character of those who were its authors. Yet, if reverence for these may be somewhat diminished in the minds of those (if any) who may agree with these strictures, not the less ought we to congratulate ourselves on the lasting benefits which the Revolution has conferred upon us. But for William and the protestant ascendancy, not only our religion but our liberties might have been lost. We ought, therefore, to be grateful for what was done, though not blind to the manner of doing it. Still less ought we to be carried away by mistakes as to facts, or by supposed but fallacious authorities, to countenance doctrines that never were conceived, much less asserted, by those who, in our wild and dangerous theories, it is a habit to suppose were their enlightened authors. If I have succeeded in the endeavour to put our liberties upon their true ground, as pointed out by the light of reason and nature, and to disentangle them from that vast web of sophistry with which some historical visionaries, and many theoretical patriots, have surrounded them, my object will be gained. Should I even fail with many, and you approve, I shall have no regret for having undertaken a task which will not then have been undertaken in vain.

APPENDIX.

No. I.

COPY OF A LETTER FROM COLONEL AMBROSE NORTON, MAJOR IN THE DUKE OF ST. ALBANS'S REGIMENT OF DRAGOONS, GIVING AN ACCOUNT OF THE DESERTION OF SOME OF THE TROOPS, AND THE MEANS USED TO SEDUCE THEM TO JOIN THE PRINCE OF ORANGE. TAKEN FROM CARTE'S MEMORANDUM BOOK, MARKED * VOL. XII. 4TO., AND PUBLISHED IN MACPHERSON'S STATE PAPERS, I. 287.

November, 1688.

SIR,

AT the last camp which King James had at Hounslow-heath, which was in part of July and August 1688, the Earl of Dumbarton, one of his Majesty's, lieutenant-generals, sent for one of the field-officers of every regiment that were Roman Catholics, and

the majors of the regiments where neither the colonels nor lieutenant-colonels were Roman Catholics; and his lordship told me, and, as I presume and heard, he did all the rest, that his Majesty had commanded him to send for me, to give him a list of all the officers and soldiers in the regiment that were Roman Catholics, which I was ordered forthwith to do, because his Majesty expected an account of it from his lordship. The number of Roman Catholics was then very inconsiderable in our regiment, being but one lieutenant, a quarter-master, and thirteen troopers.

This order proved of fatal consequence, and was a very great furtherance of the business of our associating officers, who, daily and openly, in the camp, aggravated it with all the rancour and malice imaginable; affirming, with vollies of oaths, that it was in order to turn out all the Protestant officers and soldiers in the army, and to have none but Roman Catholics in military employments. That, in order thereto, the Irish regiments were sent for hither, and the English would be exchanged, at several times, and be reformed in Ireland, that not a Protestant would be left in them.

This was so credited that it brought over many to their party, as I have often heard; but, being confined by you in this relation to send nothing but mere matter of fact, to my own knowledge, I must confine myself more narrowly to what related to the Duke of St. Albans's regiment, in which I served.

His grace, both before and at the time of the late great Revolution, being in France, his lieutenant-colonel, Thomas Langston, having the command of the regiment, and being deeply concerned in the association, was very diligent to aggravate the aforesaid order, with all the spleen and rancour that malice could invent, to most of the officers and soldiers of the regiment; and seldom failed expressing it under several heads, the truth of which he affirmed, with vollies of oaths, to be to his own knowledge: —

First, that, in a very short time, the King would not have one Protestant officer or soldier in his whole army; and that he had entered into a close league with France to have all the Protestants' throats cut in England and Scotland.

Secondly, that the Prince of Orange had his own taylor, that was a papist, and his boy, in custody, that were hired by King James and the Earl of Sunderland, Father Petre, and Sir Nicholas Butler, to poison the Prince of Orange's waistcoat; which was discovered by the boy the very morning the prince was to have worn it; and, also, that his master had confessed the same.

Thirdly, that the Prince of Orange had also in his custody the true mother of the Prince of Wales, who had sufficiently proved the same in Holland, and would do the like here.

Fourthly, that King James, so soon as his army was modelled to his purpose, would set up a mass in every church of England and Scotland; and he

that was not a thorough papist would be hanged, quartered, or burnt.

With these discourses, he frightened and wheedled several officers and soldiers to undertake with him in his design of deserting his Majesty, who had made him lieutenant-colonel, and, if I have not been mis-informed, gave him twice money to pay his debts, under which he was very uneasy. The further to confirm his officers to effect what was designed, he introduced some of them into the company of the Treason-club, as it was commonly called, at the Rose Tavern, in Covent Garden, where they frequently met to consult with the Lord Colchester, Mr. Thomas Wharton, Colonel Talmash, Colonel Godfrey, Mr. William Jephson, and many others of their party; and there it was resolved, that the regiment under the aforesaid Lieutenant-colonel Langston's command should desert entire, as they did, on Sunday, November, 1688. The which was the better effected, because the Lord Churchill, one of the lieutenant-generals, had ordered those regiments to go on the advanced post nearest the enemy. The day before we deserted, a private cabal was held at Salisbury to agree on the time and manner of doing it. Of which cabal was the Lord Cornbury, colonel of the royal regiment of dragoons, Sir Francis Compton, lieutenant-colonel to the Duke of Berwick's, formerly the Earl of Oxford's, regiment, Lieutenant-colonel Langston, commandant of the Duke of St. Albans's regiment,

and some few others of their trusty associating officers; and, among the rest, it was agreed to put their design in execution very early next morning; and not to intrust it to Lieutenant-colonel Sutherland, who commanded Sir John Fenwick's regiment, but to deceive him and all the rest of the officers that were not in their interest.

Orders were given at the setting of the watch, being at ten at night, that the quarter-masters and adjutants of the foresaid three regiments should wait for the coming of the post, by which, they gave out, they expected marching orders. They accordingly did so. About twelve the post came in, and Colonel Langston also, who had, accordingly to the agreement of their late consult, the counterfeit sham marching orders from Mr. Blathwayt, secretary of war. He called for the bag before the officers, and broke it open, and conveyed the orders so cunningly amongst the letters, that none of those discovered it whom he had employed to help him to look for them. He immediately carried them to Lord Cornbury, the commandant; and, thereupon, orders were presently given out for the regiment to be ready to march, at five o'clock the next morning, towards the enemy; and, the better to disguise the matter, it was given out that several other regiments were to come immediately into our quarters, and refresh themselves, and follow us. Two days and a night we marched very hard, not keeping the direct road, and had very little time allowed us for rest; so fearful were they

of being pursued. In the march, they were very apprehensive that the Earl of Feversham, the Duke of Berwick, or Sir John Fenwick might overtake them, and countermand their march ; which, if any of them had, or any other general officer that was not of their party, they were resolved to have shot them, as both Lieutenant-colonel Langston and others told me, when they were got into the Prince of Orange's quarters ; and, in order to it, Francis Langston, captain lieutenant to Lord Cornbury's troop of dragoons, and brother to Lieutenant-colonel Langston, commanded an advanced party of dragoons in the front, and Lieutenant-colonel Thomas Langston another in the rear, of the three regiments that he drew out of his own troop, which, he pretended, were to keep the men up together, but were, in truth, to have executed the aforesaid design.

In our march, the Earl of Abingdon, Sir Walter Clerges, and several others, came in to Sir Francis Compton, under pretence of being volunteers with him, and marched with him to Axminster, within six miles of the enemy's quarters, where we halted the most part of that day ; and, in the evening, it was given out that they had discovered a design of the enemy's beating up our quarters. In order to prevent it, orders were given out for our being in readiness, in the evening, to beat up theirs ; and, accordingly, at the time, the trumpet sounded, and, the dragoons' drums beat to horse. After which, having sat three or four hours on horseback, which

was chiefly occasioned by Major Littleton, of the Duke of Berwick's regiment, and Major Clifford, of Lord Cornbury's regiment, who had information given them by some of their soldiers that the pretence of beating up the enemy's quarters was but a sham, and that it was a design to desert the king; assuring them that some of their fellow-soldiers had been persuading them to go in along with them. Upon which the two majors so threatened Sir Francis Compton and the Lord Cornbury that, though they were the two forwardest officers for deserting with the regiments at Salisbury, yet Sir Francis Compton hung an arse, and sneaked away back to Salisbury with almost his whole regiment; and Lord Cornbury stole away with his. Lieutenant-colonel Heyford, who was more resolute, stayed, with most of his troop and some few others, not exceeding fifty in the whole. The regiment marched back to Salisbury under Major Clifford, to whom his Majesty gave the regiment. The whole time of being on horseback at Axminster, the Duke of St. Albans's regiment was drawn up in a yard and back street; and at such a distance from the other two regiments, and being very dark, that they knew nothing of what happened to the other two regiments.

About ten at night, being the 12th of November, Colonel Langston came to the head of the regiment, and commanded them to march, which accordingly they did; and, about twelve, we marched into Honiton, the enemy's quarters; where, instead of beating

them up, we were received as friends, to the great surprise of those that were not instructed with the business. Brigadier-general Talmash commanded in chief, where his regiments of Scots were drawn up, as, also, small parties of horse of the Prince of Orange's *garde du corps*, Mr. Bentinck's regiment, and a party of Gray's dragoons. There were no regular quarters assigned for the deserters that night, but they were all ordered to shift for themselves, and to be on horseback, near the market-cross, at eight next morning. Every officer had time given him till then to give his answer, whether he was willing to stay with the Prince of Orange or not; and those that would had all manner of encouragement and promise of preferment. Those that were not willing were promised leave to return, with their horses, arms, and baggage; but, before the time was expired, their answer was demanded; and Major Ambrose Norton, Lord John Metham, Cornet Archibald Clincard, Cornet Dennis Ashburnham, and Quartermaster David Brady, upon their refusal to embrace the service, were all made close prisoners.

At the time appointed the regiment was on horseback; and the confined officers, being just against them, they could see what past; which was Colonel Langston riding through the ranks bare-headed, haranguing and persuading the soldiers to stay with him; but about thirty-three, refusing to serve, were immediately sent prisoners to the main guard, which was kept in the market-house; so that the number

of soldiers that embraced the service, besides officers, were, of the Duke of Berwick's regiment, twenty-five mounted, and two on foot; of the Duke of St. Alban's regiment, one hundred and one mounted, and fifty dragoons; in all, one hundred and seventy-eight: a very inconsiderable number to make so much noise as it did through the kingdom, of three regiments deserting in a clap. But they, being the first that broke the ice, valued themselves extremely upon it, and reviled the King their master, whose money and commissions they went off with in their pockets, with such base and opprobrious language, as is too indecent to be repeated. They were so far from keeping their promise, of letting the officers and soldiers return, with their horses, arms, and baggage, that they plundered them of all they had, that only excepted which was on their backs; and with such inhumanity to their fellow officers, that they would not suffer them to change their foul linen for clean, nor let them have their papers and money, or any thing else, that was in their portmanteaus. The fore-mentioned time, that the officers had given them to consider whether they would embrace the service or not, gave them opportunity to inform themselves in what condition the enemy was; and the account given them, by several officers that came over with the prince, was, that they were between thirteen and fourteen thousand; but that they were in a very ill condition, with their horses, by reason of the great storms at sea; and that the Prince of Orange had

long expected his friends in the army, not setting a value upon the country's coming in to him. That this would be extreme welcome news to his Highness at Exeter; and that we had exactly nicked the time; for, had we not come when we did, he was resolved to embark at eight next morning, and go back, which had been the result of three councils of war. But just at the breaking up, it was carried to stay twenty-four hours longer, to try if any of the army would come in; and so little hopes had they, till this party came in, that the Prince had not so much as brought his cannon ashore.

The Scotch soldiers of colonel Talmash's regiment, that had the guard of the Duke of St. Alban's regiment, treated them very civilly, and gave them drink, and drank King James's health to them, on their knees, and they declared to them their great dislike of the service they were engaged in. They said they were all one king's subjects, and were very sorry it was their fortune to be in the service against their own king. They complained of their hardships and smallness of their pay; and they wished they were so happy as to be in the King's service; and, if he would but pardon them, it should not be long before they should be with us: that they knew a great many more that were of their minds, if they were sure of their pardon and of being employed.

Many persuasive arguments, with great promises of favour and advancement, were often repeated to the officers, in the time of their confinement, to induce

them to embrace the Prince of Orange's service ; and, among many others, they assured them, that the Prince's coming into England was upon the earnest request and invitation of the lords spiritual and temporal, the army, navy, and most considerable body of the nation, to redeem them from slavery and popery. They also, with many oaths and vows, assured major Norton, that a lieutenant-general, under whom he had served, was the deepest in the association, and was the first who proposed to them the undertaking, and had faithfully promised them, and sent the Prince word, that he would be there that night, or to-morrow morning at farthest ; and not he only, but many others also, the most considerable officers in the army, and with the better part, if not all, their regiments ; the Duke of Grafton's foot-guards and the old regiment were certain to come in to them ; and that, in a few days, we should see the King the most deserted prince that ever lived. Some of the deserting officers wrote to their friends what progress they had made, to encourage them to come in to them ; and with these letters and a pass, after three days' confinement, they dismissed the officers, and, soon after, the soldiers. But within an hour or two, they sent a party of twenty dragoons after them ; upon what design the late prisoners know not ; but they followed them a day's journey, and lay but three miles short of the officers ; only cornet Ashburnham and two troopers, going a-foot, lay short, and fell into their hands. They took from them their money, and the cornet's

cloak, which was all that was left before, but just the clothes on their backs. They told them their business was with monsieur, their major, and were very inquisitive after him. But no account of him, they returned back.

These officers and soldiers thus coming away, so much discouraged many of them, that they sneaked away again. His Majesty, and the Earl of Feversham, his lieutenant-general, received the officers and soldiers, that were so trepanned into the enemy's quarters, and returned to their duty, most extraordinarily kindly at Salisbury; and, after the major had acquainted his Majesty with all the discoveries he had made, by being in the enemy's quarters, which were further confirmed by several letters which fell into his Majesty's hands, he was graciously pleased to make the major lieutenant-colonel of the Duke of St. Alban's regiment, and advanced all the rest of the officers, and gave to each two hundred days' pay to equip themselves, and also five pounds to each trooper; and orders were given, that the corporals should be made quarter-masters; and as many of the troopers as were fit, and vacancies, to be made corporals; and each to have twenty pounds more to remount him, and the regiment recruited. The officers and soldiers received all this money at Salisbury, without any deduction of poundage; so affectionately kind was the King to those of his army as did their duty; which, together with many of the regiment that were not able to get up, by reason of

the hardness of the march, made up above eighty soldiers, who were afterwards at Highgate. But by reason of his Majesty going away, that regiment was not recruited; lieutenant-colonel Norton paying constant attendance to his Majesty, even to his last departure from Rochester. A corporal or two, and several trumpeters, that had marched a-foot from Honiton to Salisbury, followed him to Rochester, to tender their service there. But, it being then too late, they returned home to their own country, which was Derbyshire, where they had been raised by the Earl of Scarsdale. Several of the loyal soldiers were of the Peak. Had not these things gone on so fast, these soldiers had discovered a spy or decoy, in their march from Honiton to Salisbury, which might have been of service to his Majesty. The spy treated them very kindly with all that the place afforded, and insinuated himself very much into them, under pretence of desiring to be a trooper with them; and, after having drank very hard with them, desired to know what pay they had. When he was told two shillings and sixpence a day, he said it was very small; and that he had been at Exeter, and was there pressed five shillings a-day to be a trooper, with two leather pouches full of money, to buy him a better horse. By this discourse, they believed he designed to decoy them back again. After which he slipt from them. But they, acquainting their officers with it, were ordered by them to make inquiry after him, which they were very diligent in doing; and, after

some short time, found him attempting the same thing on the foot-guards, where, by order, he was confined on the main guard in the session-house at Salisbury. Notice whereof being given to lieutenant-colonel Langston, he went and examined him there; and, reflecting on what he had said to the troopers, and by some papers found in his pocket, it appeared that he was a captain or master of a ship, a Taunton man, and undoubtedly what he was suspected to be. Lieutenant-colonel Norton acquainting the King with it, he ordered one of the secretaries of state to go and examine him again, and commanded the lieutenant-colonel to attend him; which being accordingly done, he was convinced that he was one of the Prince of Orange's decoys or spies; and gave him till next morning, about eight, to confess or die. But that night, the Lord Churchill, who had been till near twelve in his Majesty's bedchamber at a council of war, deserting with some others, his Majesty altering all his measures, and retiring from Salisbury, our spy was lost; or, at least, I never heard of him. These are all the remarkable passages that I can remember to have been acted by the Duke of St. Alban's regiment, relating to the late great Revolution.

No. II.

THE SPEECH OF DENZILL HOLLES, ONE OF THE COMMISSIONERS OF THE HOUSE OF COMMONS, IN 1660, TO KING CHARLES II., ANNOUNCING THE PROCLAMATION THAT HE HAD RETURNED TO HIS THRONE.

Dread Sovereign,

YOUR faithful subjects, the Commons of England, assembled in parliament, have sent us hither, twelve of their number, to wait upon your Majesty, and, by their commands, we are here *prostrate at your royal feet*, where themselves are all of them present with us in the sincere and most loyal affections and desires of their hearts, and would have been in their persons, if your Majesty's service, and the trust reposed in them by all the several parts of the kingdom, did not necessarily require their attendance and continuance in the place where they now are, and where all their thoughts and endeavours are wholly taken up and employed in those two great and main works, which are the proper and genuine ends of all parliaments, the advancement of their king's service, and the discharge of their country's trust. And certainly, Sir, we can speak it with a great deal of joy, and with no less of truth, that never parliament made greater demonstrations of zeal, affection, and loyalty to any of the Kings of England than this parliament

hath done, and doth, and we hope, and doubt not, — nay we know it, that it ever will do unto your Majesty, our liege lord and king.

Their hearts are filled with a veneration to see and serve you ; and their tongues do, upon all occasions, express it ; and in so doing they are (according to the nature of parliaments) the true representative of the whole nation ; for they but do that in a more contracted and regular way, which the generality of the people of the land, from one end of it to the other, do in a more confused and disorderly manner : yet, as heartily and as affectionately, all degrees, and ages, and sexes, high and low, rich and poor (as I may say), men, women, and children, join in sending up this prayer to heaven,—God bless King Charles ! Long live King Charles ! So as our English air is not susceptible of any other sound, and echoes out nothing else. Our bells, bonfires, peals of ordnance, vollies of shot, the shouts and acclamations of the people, bear no other moral,—have no other signification, but to triumph in the triumphs of our King in the hearts of his people.

Your Majesty cannot imagine, nor can any man conceive it but he who was present to see and hear it, with what joy, what cheerfulness, what lettings out of the soul, what expressions of transported minds, a stupendous concourse of people attended the proclaiming of your Majesty, in your cities of London and Westminster, to be our most potent, mighty, and *undoubted* King.

The oldest man living never saw the like before; nor is it probable, scarce possible, that he who hath longest to live will ever see the like again, especially (and God forbid he should) upon such an occasion; for we wish and heartily pray that your Majesty may be the last of men of the generation now in being who shall leave his place to a successor.

We have the Proclamation itself to present unto your Majesty, and the order of the two Houses enjoining it to be proclaimed throughout England, Ireland, and your dominion of Wales; and, likewise, their orders for all ministers in their public prayers to pray for your Majesty, and for the illustrious Prince the Duke of York, your Majesty's brother, and for the rest of the royal progeny. And another order of theirs, for taking down every where the assumed arms of the late pretended Commonwealth, and setting up the arms of your Majesty in their stead.

You are the light of their eyes, and the breath of their nostrils, their delight and all their hope. To have been so long banished from them into a strange land, it is no wonder that the news of your return should put a new life into them. What then will it be when their eyes shall be blessed with the sight of your royal person? And, therefore, are we commanded humbly to acquaint your Majesty with the earnest desires of both Houses for your speedy return unto your parliament, and the exercise of your kingly office.

No. III.

OPINIONS OF MACKINTOSH, OF THE CONTINUATOR OF
HIS HISTORY, AND OF HALLAM, UPON THE DEBATES
IN THE CONVENTION PARLIAMENT, 1689.

THE opinions asserted in these strictures upon the famous vote of the abdication and vacancy of the throne, are not in unison with those of the jurists named above. Let us see how they differ. On the question whether the declaring the throne vacant, would not make it elective, the Continuator of Sir James observes, that Maynard, having argued that the Commons did not mean to say that the crown was *always* and *perpetually* elective, *he left it to be understood by implication, that they did mean it to be elective for that time.*

It is never to be forgotten that the position of Sir James is, that the proceeding of the Convention established as a principle, that a total stranger to the family of James (emphatically Kirk or Jeffries) might have been elected as well as William. This we have denied, and deny also that Maynard even thought so in what he said. His speech is guarded and cautious against the notion of election. He says, pointedly, the word "elective" is none of the Commons' word; neither is the making the kingdom elective the thing they had in their thoughts: all they mean by this matter

is to provide a supply for the defect of the government. *This provision must be made, and if it be, that would not make the kingdom perpetually elective. I stand not upon any word, but am for the thing, that a provision be made to supply the defect.**

I think I may safely leave it to the judgment of any enlightened person, whether this was more than a fair anxiety to fill up the vacancy (supposing it to exist) by some fit person, who, from being *among the heirs of the crown*, might have a claim to be appointed in the room of one not so fit. To suppose that Maynard's language, as above given, could warrant, *even by implication*, that he agreed with Mackintosh in holding that Kirk or Jeffries had as much legal qualification as William, is to me astonishing.

In his review of the errors in reasoning of the managers for the Commons, which led to the final vote, one would suppose the Editor of the History of the Revolution was arguing on our side, and he argues ably.

"The resolution of the Commons," says he, "was so deficient in perspicuity and logic, that one of their managers, after, as has been observed, calling the abdication a premise, admitted it to be a conclusion; and then sought refuge in the solecism of a double conclusion. The substance of it in a logical form may stand thus: — The King, by violating the original contract, abdicated; and, by abdicating, vacated the throne. It was a sort of *sorites*, in which the abdica-

* Chandler, ii. 233.

tion was intended to be a conclusion as to what goes immediately before, and a premise as to what immediately follows. But, in point of fact or logic, it was neither the one nor the other. It is of the essence of abdication, that it should be free. Every abdication recorded in Livy, from the first Dictatorship down to the abdication of Sylla, is voluntary. Grotius says it must be voluntary and free, whether done by overt act, or by express renunciation. The Commons said that King James had, even in this sense of the term, abdicated, because he, of his free will, committed those violations of the original contract, of which his abdication, so called, was the consequence. Now, if this be admitted, and King James voluntarily deposed himself, it will follow that the judicial execution of a criminal is a suicide; for the criminal voluntarily committed the crime by which his life became forfeit. Here the language of the law and of the community suggests the proper word, 'forfeiture,' which should have been applied to James the Second. *Forfeiture*, not abdication, is the true conclusion, from the violation of the original contract as a premise. To take abdication as a premise: Did King James, by abdicating (supposing for a moment that he did abdicate), thereby vacate the throne? Grotius, in the very citation of Somers, says, 'jure naturali quisque suum potest abdicare.' But a life-right only, not a perpetuity, was vested in King James, who therefore could abdicate *only the life-right, and not the inheritance*. Abdication, therefore, was not a premise from

which the vacancy of the throne would follow as a consequence. Let the word forfeiture be substituted, and the vacancy *will follow as a resistless conclusion*. It is true, Serjeant Maynard tried to prop up the false consequence deduced by the Commons with the maxim, “*nemo est hæres viventis* ;” but the men of more enlarged sense and principles, on his side, disdained to take it up.”*

These passages for the most part confirm the criticism I have ventured upon this famous vote. One of them, however, I venture to question; viz., “Let the word forfeiture be substituted (for abdication), and the vacancy will follow as a *resistless conclusion*.”

With submission, if the vacancy mean more than as to James himself, the conclusion is by no means resistless. The forfeiture of a man who has but a life interest, does not, and, it should seem, *cannot*, carry with it the forfeiture of his children. Nothing short of a known and express law can effect this; such, for example, as that which attends treason; and in such a case as that before us there was no such law.

It is, besides, contrary to every principle of known justice; and even in treason can only be excused, if excusable, by the necessity of increasing the hazard to any one balancing whether to commit it or not. A father would certainly pause somewhat longer be-

* Hist. of Revol. ii. 219, 220.

fore he rebelled, when his punishment would fall upon his posterity, than if upon himself alone. So far, therefore, from its being a resistless conclusion, it is so contrary to all our notions of justice, such a sacrifice of innocence for the fault of the guilty, that without a positive enactment I should say the conclusion, *primâ facie*, was the very reverse. The Editor of Mackintosh, indeed, rather strangely supplies his own refutation, in what he says of abdication, that James could only abdicate his own *life-right*, — the only possession he had. If this be so, and James only had a life-right, what difference does the word forfeit make? How could he forfeit, any more than abdicate, what he did not possess?

In other remarks of the Continuator, his reasoning seems more sound to his purpose of inculcating the Whigs. “They took,” he says, “a narrow view of the national emergency, and their own mission. They should have achieved the Revolution as a great original transaction, and sought precedents to justify it among similar transactions in the annals of mankind. Gro-tius, whose authority was often quoted, and implicitly respected on both sides, would have supplied a historic *precedent* of more weight than his *abstractions*. *Philippo ob violatas leges imperium abrogatum*. It appears that the republicans in the interest of the Prince of Orange, proposed that a formal sentence of forfeiture should be pronounced against James, and that the Prince should be as formally elected king.” But this, says Burnet, was over-ruled in the begin-

ning. The word "forfeiture" was thrown out in the debate; but by whom does not appear.

"The Whigs of 1688," continues the Editor of the History, "were secretly as jealous as the Tories of admitting, *whilst for THEIR PURPOSES they acted upon it, the natural inherent and inalienable right of the community over its government.* Hence their adoption of the poor quibble, that James had deposed himself."

Bishop Burnet, the historian of the party, said, they meanly used the ambiguous word *abdication*, for its very ambiguity.

Now, as far as this reasoning applies to the *inconsistency* of the vote of the Convention with the facts, we concur in it. However we may differ as to the right of the community (if by that is meant only a part of it, though called by the name of *people*,) to destroy its constitution, we cannot but agree that the Commons did flinch from, nay, disavowed, those principles which their acts implied. To have been *consistent* they ought to have gone the whole length of Mackintosh's doctrine. But they did *not* go that length; and they, in terms and in form, refused to do so. By this they stultified themselves, if you please; but not the more, on that account, has any one a right to force upon them doctrines which they expressly repudiated.

With regard to the precedent in Grotius, *of more weight than his abstractions*, the "Philippo ob violatas leges imperium abrogatum," I know not that it will bear the construction put upon it by the Editor of

the History, that it means *forfeiture*. “Abrogare” certainly means to take away, to annul, to revoke, abolish, repeal, *destroy*, if you please; but I nowhere find *to forfeit* among its meanings. In seeking the Latin for *forfeited*, I find “*confiscatus*,” but not “*abrogatus*.” But granting the whole benefit of this interpretation, how will the “*imperium abrogatum Philippo*” extend the same consequences it implies for himself to his heirs, any more than the abdication, or forfeiture of James, to his? In no way, therefore, can any one, if the eternal rules of justice are obeyed, make this case of Philip, or any other that I know of, support the theory, of a natural, inherent, inalienable right of the community over its *government*. If for government we read *governor*, (that is, the individual offender, but not the lawful dynasty,) there might be little difference between us, for I have acknowledged all the rights of self-defence.

Thus much for the doctrine of Sir James.

If we now turn to Mr. Hallam, we shall find many of the same opinions, as to the necessity and justification of resistance to James, which are held by Mackintosh; but developed in a manner far more sober, and therefore more weighty. As a partizan, even to wildness in daring, we may admire, but are not dazzled, by the high-soaring flights of the *Vindiciæ Gallicæ*. In the Constitutional History, though we may not agree with him, we wait upon the reasoning of the discriminating judge.

Preliminary to the account of the steps by which

the Convention proceeded, there is an argument in Hallam, of some curiosity, on the necessity for the dethronement of James, after his power had been completely reduced. He notices, very fairly, that there was an opinion against abjuring him, "*which misled half the nation :*" a great admission, and diminishing much of the force of the argument founded upon the *universality* of the feeling in favour of the Revolution.

This opinion was, that the constitutional mode of redress by parliament was not taken away ; that writs were ordered for one to assemble before the actual invasion ; and that the sincerity of the promises of redress ought to have been tried.*

Upon this Hallam owns, that, even before the invasion, "James had made little progress ; he had even sustained a signal defeat in his endeavours to place the professors of his own religion on a firm and honourable basis."† He also thinks, that, from the parliament he had promised to call, he would have encountered the same warm attacks upon his administration as had distinguished the parliaments of his father and brother. But as he was in no want of money, he would have determined more decidedly than ever to govern without them. "The doctrine," says he, "imputed of old to Lord Strafford, that, after trying the good-will of parliament in vain, the king was absolved from the legal maxims of government,

* Constitut. Hist. iii. 335.

† Id. iii. 336.

was always at the hearts of the Stuarts." He goes on to state, "that from his army being numerous, and in progress to become papists, together with his alliance with France, he might have put down insurrection, and enslaved the nation." *

Now upon this, the first thing that strikes us is, that though possibly the supposition might be true, yet the whole is assumed without proof. It is not proved that James would necessarily have quarrelled with his new parliament, and resolve to govern without one. It is not proved that his army would have become papists; or, if they had, that they would have enslaved the nation; and, above all, it is not proved, though so sweepingly stated, that the maxim imputed to Lord Strafford would have been pursued by James.

Hallam, however, thinks his suppositions sufficiently warranted to justify what was done; nor am I prepared to gainsay it. But when he goes farther, and doubts whether William absolutely expected to place himself on the throne, we look at the history, and feel that he is contradicted.

Of the Revolution, as a precedent, the opinion of this able author is remarkable. "Except in the article of the dispensing prerogative, he admits that he cannot say, on comparing the Bill of Rights with what is proved to be the law by statutes, or generally esteemed to be such on the authority of our best writers, that it took away any legal power of the

* Constitut. Hist. iii. 337.

crown, or enlarged the limits of any popular or parliamentary privilege.”*

What becomes here, then, of the inalienable right to resist, cashier, and elect, *established* by the precedent of the Revolution? He thinks the success of the Revolution (from a number of unforeseen lucky incidents, such as the withdrawal of James,) ought not to seduce other nations into the sanguine persuasion that it would be easy to follow our example. As it was, he says, the return of the King from Feversham produced a schism among the revolutionists, dangerous to the final settlement; because it forced on that intimidation on the part of William, which drove his rival from the kingdom, made his flight excusable and defensive, and brought out “*too glaringly* the undeniable fact that the Convention deposed and expelled their sovereign.”†

That their Sovereign was *virtually* deposed and expelled, cannot be denied; but formally, and by whom, except by William, or the fears produced by him, still remains a problem. The vote of the Convention, which simply fills a throne made vacant by James himself, denies that *they* did it.

Be that as it will, what really in Hallam's opinion was done for us by the Revolution, was not so much a change in the laws, for that he does not think was effected in any great degree; nay, he thinks that statutes even more remedial than the Bill of Rights

* Constitut. Hist. iii. §61.

† Id. ii. 343.

might have been obtained from James himself; neither was it by proving abstract, metaphysical, inalienable rights of sovereignty and resistance in the people (for that he but little dwells upon); but that it broke a spell that had charmed the nation. "It cut up by the roots," says he, "all that theory of indefeasible right of paramount prerogative which had put the crown in continual opposition to the people." Before this, he proceeds to say, "It could not be held, without breaking up all the foundations of our polity, that the monarchy emanated from the parliament, or even from the people; but by the Revolution, and the Act of Settlement, the rights of the actual monarch of the reigning family *were* made to emanate from the parliament and the people. In technical language, in the grave and respectful theory of our constitution, the Crown is still the fountain from which law and justice spring forth; its prerogatives are, in the main, the same as under the Tudors and Stuarts; but the right of the House of Brunswick to exercise them can only be deduced from the Convention of 1688." *

Plausible, nay, cogent and convincing, as this may to many appear, it is susceptible of much critical observation, which I venture to offer.

In the first place, that the Act of Settlement *confirmed* the rights of the Brunswick family, and that that act was *deducible* from the Convention, cannot be denied. But if it be meant that those rights do

* Hallam, iii. 345.

now “emanate from the parliament and the people,” as if by free election, which the parliament and people could have prevented by any means, except by a *forcible departure from the law*, that is, by the right of strongest, I presume to differ from this opinion.

We have already seen that all Roman Catholics were deprived of their claims by the Bill of Rights, which was a regular act by king, lords, and commons; and, if I am right in the consequence deduced from it, the right of the Brunswick family instantly accrued. For although the Act of Settlement *acknowledged* this right, I hold that it did not *create* it; any more than the frequent acts *regulating* the succession, so often alluded to, *created*, by free and new election, the titles of Edward III., Henry IV., Edward IV., Richard III., Henry VII., Mary, or Elizabeth. The title of the Brunswick family, therefore, if this view of it be correct, did not emanate from the parliament and the people, any more than the titles of those other monarchs, whom no one certainly ever supposed to have come in by election. Let us suppose that James, instead of being held to have *abdicated*, had, by the verdict of the Convention, *forfeited* his crown, and, by a regular sentence of the Convention, had been *deposed*, and the succession given, in their own right, to Mary and Anne, in preference to William. Could the right of those princesses have been said to emanate from parliament and the people, and not from their claim as heirs? Did Anne’s right so emanate, and not as heir, because she was postponed

to William, in the same manner as Elizabeth of York was postponed, or rather not noticed, when Henry VII. was preferred?

Just so we hold it was with George I., when all Roman Catholics had been set aside.

But the great advantage of the Revolution, Hallam goes on to say, or, as in his own language, he "*would explicitly affirm*," consists in that which was reckoned its reproach by many, and its misfortune by more, *that it broke the line of succession*. No other remedy, he says, could have been found, according to the temper and prejudices of those times, against the unceasing conspiracy of power. But when the very tenure of power was *conditional*, when the crown, as we may say, *gave recognizances for its good behaviour*, the several parts of the constitution were kept in cohesion by a tie far stronger than statutes,—that of a common interest in its preservation.*

Well: all this is very well as policy, but is it law? It only renews an argument that has been sometimes used for preferring a usurper upon the throne instead of the right heir, because he is upon his *good behaviour*; the rod of a defective title is kept over him; and if he offends, an avenger is always at hand, in the true prince, to keep him in order.

But were the house of Brunswick usurpers? If their religion set aside the house of Savoy, did they not come in at once as the next nearest descendants of James I.?

* Hallam, iii. 346.

Will Mr. Hallam be good enough to explain what he means by the "very tenure of their power being *conditional*?"

Suppose they behaved ill! Suppose they revived the battle of prerogative! What arms have the people from the Act of Settlement, more than they had against James? What security has the breaking of the line by the Revolution given us, which we did not possess before? How, indeed, was the line itself broken more than it was in the older times, in the reigns formerly enumerated?

All these questions, I venture to think, ought to be answered before we can say that the title of our kings, even now, emanate from the parliament and from the people in any manner different from what they did before; and I presume to question the soundness of the position, however ably supported, that the transactions of the Revolution, and the Act of Settlement, amounted not only to a deposition of the reigning sovereign, but "an *election* of a new dynasty by the representatives of the nation in parliament." *

* Hallam, iii. 347.

No. IV.

OPINIONS OF MR. FOX.

ON such a subject as we have been discussing, it would not be easy to pass in silence the sentiments of a man who so loved the liberal parts of our Constitution, and so venerated the Revolution, as Mr. Fox. Even without this love and veneration, and were his conclusions merely those of a cool and unenthusiastic judgment, that judgment was so clear and profound upon every thing which engaged it, that he would not do prudently or fairly, who, in treating any subject touched upon by him, should pass on without examining his opinions, whether in consonance or opposition to his own.

As may be expected, this extraordinary person brought to the contemplation of the events we have been examining all that could give them consequence, or ennoble their character, drawn from the warmest feeling for liberty, and the highest sense of popular rights. Accordingly, though in his History of James II., unfortunately for letters, and the lovers of history, he did little more than commence the subject of the Revolution, we find every thing that can prepare us for its panegyric, as well as the assertion of all those principles in favour of republicanism and republicans, and in condemnation of crowns and crowned heads, which those who call themselves liberals in the present day are so fond of displaying.

With all the reverence, however, which I have expressed for the abilities of this high character, and his thousand attainments both in public and private life, — his openness, his integrity, and a simplicity surprising, considering how nursed he was from infancy in both the business and pleasures of the world;—with all this, his public character was public property, and, like any other person, he is to be tried at the bar of public opinion.

When at this bar, a judge would probably pronounce, that—considering the habits and colouring of his life, for ever, almost, (whether justly or not) debarred from office, and forced (whether he would or not) into perpetual, and often very violent struggles on the popular side against the Court,—he was too much of a partizan in politics, too habituated to the hottest fire of debate in the Commons, to forget himself on the same subjects when started in the closet. Whatever his wishes to be impartial when he assumed the character of an historian, on a controversy between the crown and the people it was scarcely possible for him to put off the character of a demagogue. An able reasoner he could not fail to be; a dispassionate one he *could* not be.

Accordingly, we are perhaps not unjust in saying, that what we have found in his history, is no more than what we expected; — prejudice in his general principles and maxims; prejudice on particular facts; prejudice against James as a king; prejudice as a Stuart. He criticises the partiality of Hume for

kings, as amounting to childishness. His own fondness for republicanism as the chief source of virtue, if arguing from feeling, instead of reason, proves it, is not less childish.

Were we, however, to search for a pregnant instance of his soundness or fairness in his estimate of men or things, we could not select one more pertinent than what he here says of Hume: — “He was an excellent man, and of great power of mind, but his partiality for kings and princes is intolerable; nay, it is in my opinion quite ridiculous; and is more like the foolish admiration which women and children sometimes have for kings, than the opinion, right or wrong, of a philosopher.”* Let the reader judge from this criticism of the *impartiality* and clearness from prejudice in him who vents it. Whoever reads merely the appendix of this great writer to the reign of James I., in which the history of the Constitution is discussed, must, from its fairness and truly philosophical character, be filled with the glaring and gross injustice (so as to excite surprise, and, I had almost said, indignation,) at the above sentences.

In the course of those vehement struggles for power, or the enforcement of popular doctrines, in which Mr. Fox passed nearly the whole of his political life, he pushed extreme principles to the utmost verge. Moderation was unknown to him. Like Lord Russell, kind, amiable, and generous in private life, his feelings on party questions became ebullitions,

* p. 21.

amounting almost to rage. Hence, from his disdain of every thing that thwarted his favourite theories on any reigning object, he overdid his part: and it was not ill said of him, that though he might sometimes drive the right nail, he drove it till he split his work. It is certain, that his devoted admiration of the French Revolution, pushed to extremity, and persisted in long after its defence had been abandoned by men equally impressed, though more rational in their love of liberty, did him great and lasting harm. This might have proceeded, and probably did so, from the serious convictions of his mind; but what can be said to the mischievous power of party over his soul, which could make so genuine a lover of his country put on the demeanour of indifference and apathy towards her in her utmost need? I allude to those appalling moments of the mutiny at the Nore. The mischief he did himself in endeavouring to set the House of Commons above the Crown by his India bill,—a measure, as to usurpation, the very counterpart of the Long Parliament,—need not be remembered. Nor will I go through the fifty-seven articles of deserved impeachment against him, so fearfully and forcibly drawn up by one who had so long fought by his side.* But the chief of them, his most suspicious and most unenglish conduct in exciting and encouraging Russia to resist the government of his own country in a dispute between them, impressed many

* Burke. A wonderful and powerful performance never answered.

even of his admirers with a sense of his rashness, which was never eradicated. In a word, nothing short of this extreme violence, with which he pushed all his principles of action till they became dangerous to all whom they affected, could have indisposed towards him, during so long a public life, myriads of his countrymen, who, from his wonderful abilities, his high and generous qualities, and utter contempt for every thing false or mean, were otherwise eager and anxious to see him at the head of the state. Soured and worn out, yet not instructed or made wiser, by this want of success, he only became more imprudent, in very anger, as it were, that so many essential great qualities to obtain the suffrages of his country should fail. Hence, at one time he pouted like an angry lover, and thought to avenge his wrongs upon his country by abstaining from her service, when he seceded from parliament. At another, if he did not (as was eloquently said by one who knew the constitution quite as well as himself, though he took a very different view of it,*) *unfurl the standard of rebellion*, it was not his fault that the people did not rise in arms against the laws, since he told them plainly, that it was only a matter of prudence (and therefore, by implication, not of duty,) that made them obey them.

From this sketch of the violence which formed the derogations from an otherwise perfect character in this great man, we perhaps might suppose that

* Lord Colchester, when Mr. Abbot,

his opinions upon the events, transactions, and characters of the period which he chose for his theme, were by no means neutral. On the contrary, that they would be what we find them, tinged with misrepresentation, and bent and biassed to the popular side, in all the ardour, and sometimes, in all the blindness of a partizan.*

Let us see if this animadversion (a bold one I allow)

* The following are opinions upon this extraordinary and gifted person, not more just than candidly expressed, and which it may not therefore be unacceptable to the reader to reperuse.

“ With perfect rectitude and impartiality of intention, a man in a particular political situation can hardly form impartial opinions; maintaining with his party certain general political positions, and hearing, in the society of that party, a set of particular sentiments, which the interest of some, the enthusiasm of others, and in general the very war of opposition which they have maintained in common, have tended to heighten and confirm: in such circumstances it were scarce to praise a man’s heart or disposition to suppose him perfectly unbiassed: his *very virtues*, friendship, confidence, and social affections are likely to betray him.

“ Those virtues form the panegyric of Mr. Fox with his friends; they have been acknowledged by the most strenuous of his opponents. In the midst of those friends, a man with less pliancy of disposition, and less warmth of affection, than Mr. Fox, is inclined to imbibe opinions unfavourable to the strict impartiality of historical discussion: he breathes an atmosphere of party, with which the constitution and temperament of his own mind can hardly fail to be affected.

“ Mr. Fox’s habits and political contests were also unfavourable to historical impartiality. A man accustomed to debate is too often apt to argue more for victory than for conviction; and to look more to the advantage or fame of defeating his adversary, than to the justice of the cause for which he fights. He has been accustomed to contend and to dispute, rather than to discuss and to deliberate; and will much more easily form or refute arguments, than set up or weigh opinions.”

Rose’s Observations on Mr. Fox’s Historical Work, Introduct. p. 9.

is undeserved: and the better to accomplish the object, it will perhaps be no more than right to follow Mr. Fox's own divisions of his subject.

In the introductory chapter of his work, he of course notices, though he does so very cursorily, the civil wars, "so *intemperately*," he says, "denominated *rebellion*, by Lord Clarendon."* "That they (the parliament)" he adds "according to the general principles of *morality*, had justice on their side, cannot fairly be doubted."

Now for one, I not only doubt, but, for reasons already given, I am convinced the other way.

That many however may agree with him in this, cannot be denied. But to those who think the observation misapplied, and proceeding from the ultra modern doctrines of the rights of insurrection, not founded upon the real nature of the facts, I can only refer for proof to the discussion of the conduct of the Long Parliament given in the body of these strictures.† From that conduct, if any one can doubt that rebellion is the true and proper epithet belonging to it, from the epoch of the nineteen propositions, little likely is it that we can agree with him.

The defence of those of the propositions that concern the militia, is such as might be expected from the extreme opinions of Mr. Fox. "Though there may be more difference of opinion," says he, "upon their (the parliament's) proposed regulations in regard to the militia, yet *surely when a contest was to be*

* Hist. Jas. II. p. 11.

† Supra, 72, et infra.

foreseen, they could not, *consistently with prudence*, leave the power of the sword altogether in the hands of the adverse party.”*

Here it is obvious that the question is begged by extreme Whiggery; for the soundness of the supposition must depend upon the justice of the quarrel. If it were not just, the reasoning would be that of a burglar, who, being resolved to rob a house, first murders the master, as, *surely* where resistance is foreseen, it *could not be consistent with prudence* to leave him alive to defend his property. Unless the Commons, then, had clearly a right to ruin the monarchy, they were, in the demand of the sword, in the situation of this burglar. If Mr. Fox thinks they had this right, which probably he does, his defence of them is sound according to his own principles. If not, never was so weak an excuse espoused by so powerful a mind. But exclusive of this, what is to be said to the position of Blackstone, before alluded to, though the King might not legally be invested with the power of the sword, it was clear the Commons had no right to it at all. Mr. Fox’s answer reaches this also. As there was to be a contest, it would not be consistent with prudence, not merely to deprive the King of it, but not to give it to themselves. So said Macbeth when he killed Duncan’s grooms, whom he accused of murdering their master, for

“ It would have anger’d any heart alive,
“ To hear the men deny it.”

* Fox, 10.

In Mr. Fox's language, it would not have been consistent with *prudence* in Macbeth to have left these grooms alive.

In the case of Lord Strafford, whose attainder he condemns, Mr. Fox is more just; nay, admirably forcible. Yet even here he lets out much of the lawfulness, or rather praiseworthiness, of insurrection. "If such cases have existed," he says, (meaning punishment by death in violation of law,) "they must have been in instances where trial has been wholly out of the question, *as in that of Cæsar and other tyrants.*"*

Mr. Fox then justifies the assassination of Cæsar, or any other king who sets aside the laws, for such is the usual definition of a tyrant; and as James could not be tried, according to *him*, he might be dispatched; and so, *any* king. For as the people (that is, any body who chooses so to decide,) are to be the judges when the laws are exceeded, any man who sits upon a throne, or, indeed, any private man, if guilty of an offence which cannot be tried, (which is possible,) may be cut off by private assassination.

This goes beyond Mackintosh, or even the Regicides, for both those parties were for *trying* the sovereign, though, the thing not being usual, they did not know how.

But if this exemption from trial justifies assassination, what becomes of the people themselves, acting upon Mr. Fox's maxim, that in a given case it was only a matter of prudence whether they should obey

* Fox, 11.

the laws? They were in that case sovereigns, and above the laws, and could not be tried. Were they to commit excesses, therefore, they might be killed without trial.

To such dilemmas does wild theory, in warm imaginations, lead the best of us.

Mr. Fox makes a question, though he does not decide it, whether the suspicion of the insincerity of Charles I. was not a justification of his rebel parliament—(rebel we must always call it, after the nineteen propositions.) Of course he holds that those suspicions amounted to a moral certainty.* Why? Because he violated the petition of right.

No doubt he did, and his conduct was indefensible. But those violations had been committed ten years before. Their consequences were such as must have opened his eyes, for dearly had he paid for it, by allowing himself to be bound hand and foot by his dutiful Commons, who had annihilated, one after the other, every grievance complained of; had, in their turn, been guilty of many gross usurpations; had forced him to the great blot of his life, the joining them in the murder of Strafford; and had given the finishing stroke to their own power, by depriving him of the incontestible, as well as most potent prerogative of his crown, that of dissolving them.

These circumstances it would only have been candid in Mr. Fox to have mentioned, when he asserted, that of the insincerity of this King there was

* Fox, 13.

a moral certainty, with a view to justify the proceedings of the usurpers. For though he says it is a question, whether the failure of the treaty of the Isle of Wight is to be imputed to the suspicions *justly* entertained of the King's sincerity, or to the ambition of the parliamentary leaders, he takes no notice at all of any of these circumstances, which, added to years of experience and of misfortune, after the offence against the petition of right had been committed, must have been, and were, so influential in producing a change of character. Still less does he for a single moment suspend his attacks upon the King, or turn aside to examine the question himself had started, as to the ambition of his enemies,—an account of which has been given in the course of these strictures.* This, in an author claiming to be an historian, is a great fault; for of an historian impartiality is the most essential of all his qualifications; and it has well been said, that one of his greatest duties is, not merely to speak the truth, but not to conceal it. Are we wrong, then, in thinking that Mr. Fox, great as he is, is, like Mackintosh, on paper, only a great partizan.

We come now to, perhaps, the most important observation of his whole work; and that, I own, is astounding. It is, that that gross murder of the King,

“ Murder most foul, as in the best it is,

“ But this most foul, strange, and unnatural.”

* Supra, p. 72, et infra.

that murder, which not only destroyed the life of a king, but tore up by the roots every security of law, every tie which holds society together,—poisoned the sweet fountains of justice, and reduced all principles of government to the maxims of the assassin,—that that murder was a far less violent measure than the attainder of Strafford.

That attainder, as all *ex post facto* laws are, is a bad thing, all must allow; and Mr. Fox, with his usual acumen, when not mystified by party feeling, has eloquently demonstrated, that nothing can justify it, but the impossibility of bringing a delinquent to trial, whom it was also impossible to render harmless without it.

Is it not remarkable that this favourable reasoning, which was thus extended to Strafford, was so far denied to Charles, that his execution (God knows, a hundredfold greater violation of law than Strafford's) should be held by this enlightened person to be a less violent measure?

But one was a *king*, the other a subject. Is it in this difference of denomination,—in other words, in the prejudices of Mr. Fox,—that we are to look for the difference in his opinion? Shall the illegal execution of a subject, amenable to law, be a cause of greater lamentation than that of one whose life no law can reach, because, and merely because, the last is a king?

I can account for this difference from no other circumstance.

The reasoning and remarks of the historian, as he goes along, I should say, are curious, and certainly characteristic.

He says, the execution is to be considered in two points of view. First, was it not just and necessary? Secondly, was it likely to be salutary or pernicious?

As to the first, he cites Hume as having given, he says, "not perhaps intentionally, the best *justification* of it, (mark the word!) by saying, that while Charles lived, the projected republic could never be secure." Had he said *explanation*, instead of justification, our quarrel with Mr. Fox had probably been less. As it stands, to destroy the monarchy, and establish a republic, by the murder of the King, though not absolutely held to be the *justification* of the murderers, is yet, in Mr. Fox's mind, the *best justification* that has been given.

In the same strain, in canvassing what, *as republicans*, the parliament had a right to do, or were wise in doing, he says, that "to take away a life in self-defence, the danger must not be problematical and remote, but evident and immediate." *

Upon this it is to be observed, that, though professing to be the reviewer of the times, he totally passes by the question, of the right in the parliament to constitute themselves republicans; but merely discusses what it was competent for them to do when they had assumed that character.

* Fox, 14.

This is, again, the case of the burglar I have supposed. What should we say to a magistrate who had to sit in judgment upon such a culprit, who, instead of sentencing him to punishment, should pronounce, that being afraid of being killed himself in breaking open the house, he killed the master of it in self-defence; and only qualified the right to do so, by saying, the danger from the master to the robber was evident and immediate.

I do not by this mean to say that Mr. Fox absolutely approves or defends the parliament for destroying the monarchy; but to point out how completely he passes over that question, and confines himself to the expediency of putting the King to death when in their power, without at all discussing the legality of the measures by which that power was attained.

It may be said, this was not Mr. Fox's object; and it is that precisely of which I complain. As a matter of curiosity, a very loyal man might canvass the question: professing to write history, no unprejudiced man would dare to pass it by unnoticed.

Having assumed this privilege, however, he gives full scope to what he supposes it would rejoice a republican to contemplate; and granting that the King was to die in order to fortify the new order of things, he glorifies Cromwell for the manner of the sacrifice. Coolly he observes, that "*among the modes of destroying persons in this situation*, (one would suppose he was talking of destroying rats,) there can

be little doubt but that adopted by Cromwell and his adherents *is* the least dishonourable.”*

The word *is*, is here remarkable. Had he said *was*, it might be thought merely a part of the passing narration; but *is* immediately converts it into a rule of conduct proper to be used on a like occasion,—as if the occasion itself were usual, or of frequent recurrence, in the history of nations.

He goes on, in the language of the fanatic Harrison, to laud it as it deserves. “Edward II., Richard II., Henry VI., and Edward V.,” he says, “had none of them long survived their deposal; but this was the first instance, in our history at least, where, of such an act, it could be truly said, that it was not done in a corner.”†

After this, though with a redeeming accompaniment, that the death was not necessary, he indulges, not without complacency, in a notion, that it has possibly, “as much as any other circumstance, served to *raise* the character of the English nation in the opinion of Europe in general; that, even in the minds of those who condemn the act, the impression made by it has been far more of respect and admiration, than of disgust and horror.” He adds, in praise of Cromwell, that the guilt of the measure is what most men would have incurred; “what there is of splendour and of magnanimity in it, I mean the publicity and solemnity of the act, is what few would be capable of displaying.”‡

* Fox, 15.

† Id. 15.

‡ Id. 17.

All that we observe upon these passages is, that, however critically and philosophically true, to present them in a history without an accompanying representation of the infamy belonging to the same character, is unfair and reprehensible. Cromwell was infamous, as well as great: infamous, from the meanness of his hypocrisy, from his false pretences, his indifference to blood in support of an execrable ambition, which broke all ties, and laid liberty prostrate; that liberty which he only espoused in order to raise himself upon her ashes. That no one word, therefore, of all this should be hazarded by a writer claiming to lead our opinions in estimating the true nature of the events he reviews, while the dazzling parts of his hero's character are alone recorded, and dwelt upon with a seeming gust and triumphant panegyric, is, to a cooler mind, seeking only for truth, not less melancholy than surprising.

Many thieves, many assassins, many impostors, many tyrants, have had great qualities,—Cæsar, Muley Moloch, Alva, Richelieu. Even Colonel Blood, in endeavouring to steal the crown, and, with a refinement of vengeance and excess of daring, attempting to hang the Duke of Ormond at Tyburn, contrived to inspire, by the boldness of his enterprises, an opinion of greatness, which produced his pardon. But should we, on that account, hold him up only as an example of bravery and contempt for danger, and not also as an atrocious and infamous ruffian, unworthy the impunity he met with.

Cromwell was, as we have said, a great, but he was also a bad man. Mr. Fox thinks fit to speak of him only in his first capacity, and to enlighten his posterity by dwelling upon his greatness alone: commending him to our admiration, not our execration. But, could this be passed over, what shall we say to a man, whom his friends and admirers boast of as the best versed of his time in knowledge of the Constitution, who gravely asserts, that the blame of Cromwell's usurpation was founded, though not exclusively, in prejudice. "The great talents of this extraordinary person," he observes, "had supported, during his life, a system condemned equally by reason and by *prejudice*: by reason, as wanting freedom; by prejudice, *as an usurpation*." Thus, according to this great authority on the nature of the government and the constitution, to condemn the usurpation of a throne by a subject, is prejudice. One can hardly believe the words were written by a reflective man, much less by a publicist, which convey this sentiment to the mind.

He is more reasonable, and less dangerous, in his panegyric on the success of Cromwell's administration. Our complaint, however, here is the old one. He treats him as a hero only; not as a tyrant, a rebel, and a usurper; and hence proves the old and sensible maxim:

"Decipit exemplar vitiis imitabile."

"It must be confessed," he says, "to be no mean testimony to his (Cromwell's) genius, that the *splen-*

dour of his character and exploits render the æra of the Protectorship one of the most brilliant in English history ;” and then, that nothing may be wanting to his hero, he adds, that among those who raised themselves to supreme power by force of their genius, (he says nothing of his wickedness, his crimes, and his murders,) that, even in respect to *moral virtue*, with the exception of the most degrading of all human vices—hypocrisy, he will be found one of the least exceptionable.*

This is so startling that we cannot help pausing for a moment, to ask ourselves whether this can possibly be the language of Mr. Fox? Well, at least, has Mr. Rose, in his examination of his history, observed, “that he has thrown over the usurpation of Cromwell a veil, which, speaking only of its *energy*, and not of its *injustice*, naturally interposes between that and our feelings. He has given the same air of grandeur to the execution of Charles I., which he favourably compares with the unjust sentence on Strafford, without stating the distinction between the violation (though gross) of the laws and forms of criminal procedure in the one case, and the overthrow of the constitution itself, from which those laws emanated, in the other.”†

It may be supposed from the bias of Mr. Fox’s

* This reminds one of a quarrel at Billingsgate. One woman said to another, “I grant I am a thief and a ———; but barring that, I am an honest woman.”

† Rose’s Remarks on Fox’s History.

mind, and all that we have seen of his opinions on government, that Monk was no favourite of his. Accordingly, he says, "that after Cromwell's death all was in the army, and that army had fallen into the hands of one than whom a *baser* could not be found in its lowest ranks."*

Is this sober, philosophical judgment, or the declamation of the opposition benches in the House of Commons?

The virtue of Monk in contributing what he did to restore the monarchy, may be certainly questionable: that he was full of wariness and concealment, taciturn and close, is true. Yet so was, perhaps, the greatest man of his time, the first Prince of Orange, the heroic and noble founder of the Dutch republic, whom Philip feared more than all the world, and who, from his guardedness in talking, was surnamed *Le Taciturne*. That Monk went all lengths with Cromwell is also true; and if he had not remarked that the prevailing spirit of the nation was to put down both the parliamentary and military usurpers, and restore the King, that he might have been tempted to become one of them is not improbable. But in all this he was no more base than almost every actor and every anarch in that anarchical time. It certainly should not seem from this, that he was baser than the basest, as Fox represents him, any more than for that other reason given by Mr. Fox, that, having gained his rank and reputation

* Fox, p. 20.

in the service of what, *however falsely*, he called the cause of liberty, he made no scruple to lay the nation at the feet of a monarch without a single provision in favour of that cause.

Well, did he do more in this than the high-minded Holles, or those thousands who had fought in the same cause, and rued it; and will this subject them to the imputation of being the basest of mankind? Does not Mr. Fox himself imply that the cause was *falsely* called liberty; and might they not repent, and think with him on that point, without being subjected to this violent abuse? Then on what is this terrible invective founded?

On his conduct on the trial of Argyle? In that trial, while other proof had failed, and he was nearly acquitted, it is said that he sent down letters, affirmed to be written to him in confidence by the marquess, when they were both republicans, and, as is asserted, friends. These letters, according to Burnet, convicted him.

That such conduct should call up the ire of a man, himself the reverse of base, is not wonderful, though it is not more than upon a par with the baseness of the Vanes, who made use of notes (taken without his knowledge) of his opinions at a privy council to destroy Strafford. But is the fact respecting Monk as Mr. Fox states it? or has this most scrupulously anxious of all historians, as he is represented by his noble editor and nephew, been guilty of rashness in his indignation, and covered a character

which, perhaps, for other reasons he disliked, with unmerited abuse?

Even supposing the fact, as Monk was now at the acme of his fortune, loaded with honours and wealth, what are we to think of the accuracy, any more than of the justice of the observation, that he "surpassed in infamy those wretches who to save their own lives are sometimes persuaded to swear away the lives of their accomplices."* The observation is not correct, for the Duke being not under this necessity to save his own life, or save any thing, his proceeding could have had no motive of infamous self-interest. But is it even correct? Let us examine, and say whether the eminent share which he had in restoring a Stuart may be supposed to have had any influence in urging Mr. Fox to make this charge, without inquiring farther for a proof of it than in the assertion of such a man as Burnet.

Of Burnet's fidelity, or rather infidelity, as to many of the facts he relates, in what Lord Dartmouth called "*The Bishop's Story Book*," with the exception, perhaps, of Mr. Fox, there seems to have been but one opinion. The only question is as to his sincerity in his own belief of them; and that question one would be inclined to decide in his favour. For such was the vehemence of a sanguine temper, and a partizanship equal to that of Mr. Fox or Mackintosh themselves, though without their ability, that, even when the pen was in his hand to

* Fox, 201.

alter (as it is said he did) characters and incidents as might best suit his feelings, we are told, and it is pretty clear from the internal evidence of his work, that he was too prone to believe what he wished, and exercised a sort of honesty in deceit.

This he himself confesses, or something very like it, in what he says of his sharpened feelings against some of his brethren of the church. The passage is very frank, and as follows:—"Indeed, the peevishness, the ill-nature, and the ambition of many clergymen, have sharpened my spirits perhaps too much against them; so I *warn* my readers to take all I say on those heads *with some grains of allowance*."* On this the rogue Swift makes a note,—“I will take his warning.”

Again, Mr. Godwin, of Baliol College, transcribes in the margin of his copy of Burnet's History, now in the Bodleian, the following letter from Lord Ailesbury to Mr. Addlestrop, concerning the death of Charles II. “Bishop Burnet is a notorious liar from beginning to end, to my knowledge. When we came to the bedside we found the Queen there, and the impostor says it was the Duchess of Portsmouth.”

Again, in regard to Magdalen College, the Bishop says the order for the restoration of the fellows was *countermanded*. Mr. Godwin says, “This is false;” and relates that the Bishop of Winchester went to Oxford, and fixed up a citation to restore the fellows; but, being summoned to London to attend the birth

* Preface to fol. edit. 1724, p. 3.

of the Prince of Wales, he left it undone, and was *reproved* by the King for coming without having first restored the fellows. Dr. Clarke gave this account to Dr. Jenner, and it is preserved among his books in Worcester College library.*

These passages I have given, more for their curiosity, than as amounting, *without other proofs*, to such evidence of the gossiping credulity of the Bishop, as ought to deprive him of all his authority as a narrator. What he states of his own knowledge we ought not to doubt, though that might be much coloured by his prejudices; but what he relates upon the mere report of others, though set off with an air of belief, as if it were certainly true, every thing we know of his officious meddling character, and unbalanced party feelings, forbids us from crediting merely because he wrote it; and such seems to have been the opinion of many of his contemporaries. Mr. Fox gives him more credit than most, yet for a reason that appears more to support than oppose the general opinion. Speaking of Seymour's *suggestion*, in his speech upon a grant to James, to inquire first into the validity of the elections, Burnet says, he *made a motion* to that effect; which was not correct; and upon this Mr. Fox makes the following observation:—"It will be found, as well in this, *as in many*

* The above is taken from the European Magazine, January and April 1795, which authority, having never seen the documents referred to, I give, lest I should myself be suspected of the same crime charged upon Burnet.

other instances, that an *unfortunate inattention* on the part of the reverend historian to *forms* has made his *veracity* unjustly called in question.*

Authority would have been a better word, for nobody suspects him of *wilful* falsehood; only a little *heightening* of facts, according to his humour, when, according to his own expressions, above given, his *spirits were sharpened* upon a particular object. But even inattention to *forms* carries often along with it matter that may involve the very essence of truth. If regardless of forms, why not of dates, perhaps of names; and how important they may be, we know. Voltaire was this sort of historian. He once abused a person for setting him right as to the time of a certain battle. "Blockhead," said he, "was not the battle fought?" "Yes!" "Then what signifies *when* it was fought?"

Upon the whole, though Mr. Fox throws his broad shield over the Bishop, it does not entirely cover him. Burnet, therefore, was the last man in the world whose hearsay (for it could have been no more) a man, *intending* to be so candid as Mr. Fox, should have vouched as an authority for such revolting language as he has applied to Monk. The extraordinary anxiety after the truth of every thing he should insert in his history, ascribed to him by his noble editor, one would have thought would have induced him to have made every inquiry, and ransacked every accessible document, before he branded

* Fox, 149.

a man in the manner in which he has branded the Duke of Albemarle.

Did he make this inquiry? If he did, with his asserted research and incontestible acumen, how could the authorities referred to by Mr. Rose in his forcible, and, I think, unanswerable refutation of Burnet's account, escape him?

The Bishop was but eighteen years old when Argyle was tried and condemned, and, with all his precocity and meddling, could hardly (and, indeed, he does not pretend to it,) have known of these letters of Monk, and their effect, of his own knowledge. His assertions, therefore, are from hearsay; and his proneness to adopt hearsay for what he wished, we have already discussed. That he wished to inculcate Monk is known.

Still, however, the hearsay might be true; but if so, being of no ordinary matter, but of the most solemn and vital proceeding that can belong to the actions of men, nothing less than a trial for life, ending in the deprivation of it, in the case of one of the greatest nobles of the land, how is it possible that no record was made of this decisive evidence, upon which, according to the Bishop, the condemnation turned?

The question was amply discussed before Mr. Fox wrote; and he was, or was not, aware of the discussion. If he was, though he might not have been convinced by it himself, he was bound, in duty to the justice he worshipped, to lay it before his readers.

If not, what are we to say of his anxiety for the strictest inquiry before he hazarded a fact, much more one upon which such an excess of vituperation was founded.

We would willingly shorten this discussion, by referring merely to the argument (a most able one) in Mr. Rose's book*; but, to satisfy the reader, we may perhaps be excused for laying before him an outline of the particulars.

In the first place, Woodrow, an historian attached to the Presbyterian cause, to which Argyle was a martyr, who lived but a short time after the event, and who was remarkable for industry in searching records, especially those affecting the leaders of his party, is *entirely silent* on the subject of the letters.

In the next place, search was made in the records of the parliament, council, and justiciary, but, from a chasm in the documents of the time, nothing was found.

This proves nothing one way or the other; but a collection was in Mr. Rose's possession, supposed complete, of all the publications during the civil war and some years after the Restoration, several of them written after the death of the Marquess, by devoted friends, *giving accounts* of what was most interesting respecting him, and *of what passed at his trial*, to his latest moments, in no one of which is the remotest allusion

* See Observations on Mr. Fox's History, pp. 21, 22, 23, 24, and Appendix, Nos. 3. and 4.

to papers having been read in aggravation of his offence, previous to his sentence

What is still more convincing, in the British Museum are no less than seven different tracts respecting the trial and execution of the Marquess, published in London and Edinburgh, one of which is entitled the last proceedings against him, containing, *inter alia*, a speech of his, in which he denies having had any epistolary intercourse with Cromwell, or any of the sectarian leaders of his army.*

The next proof is, that there is nothing in Thurloe relative to these letters; and a stronger one still, that the newspapers of the time have been searched, in which particular accounts of what passed upon the trial at Edinburgh are given *from day to day*, and not a syllable of this communication from Monk is mentioned.

Such is the strength of the negative proof against the supposed fact. And what is there opposed to it? —the hearsay, and therefore loose assertion of the gossiping Bishop, who himself, on the very subject, is convicted of an error, showing how little accurate he could be on the identical case. For he says, the Marquess wrote to the King the day before his execution: whereas the date shows it was on the very morning that it took place. This may be said to be

* We presume the speech was *after* condemnation, though Mr. Rose does not say so, for otherwise it would not be proof, as he might have made the denial to save his life.

of not much importance, and to his veracity it is not. To his reputation for accuracy in reporting, it is of the greatest.

But the argument of Dr. Campbell seems most decisive of all. Campbell, both from his clanship and his private feeling, was said to be most favourable to his ancient chief. Yet he says, that the assertion of the Bishop cannot be true; and he winds up his argument upon it by noticing that the Marquess, in his letter to the King, protesting his innocence of all connection with Cromwell's government, which the letters to Monk are said to have proved, appeals to God for the truth of his assertion. This was on the morning of his death. Could he have done so just after the production of letters which Burnet asserts convinced his friends, who would have saved him if they could, but staid away from the judgment, after such irresistible proof.

If Mr. Fox was aware of these arguments, it seems that they did not deter him from venting this calumny upon the restorer of the Stuarts. It were vain, therefore, to rely upon other arguments drawn from the conduct of the latter towards other delinquents. Yet we must not omit what Mr. Fox either did not know, or strangely thought it no set-off against his opinion, that Monk was the basest of mankind, because he contributed to destroy one fellow delinquent. "He was," says the writer of his life, "an advocate for mercy to the regicides in the House of Lords: though no regicide himself, he was silent on the bench when

commissioned to try them; and he saved Sir Arthur Haslerig's life and estate, (the bitterest personal enemy he had in the world,) by owning a promise to him, which, some say, he never made."*

Lastly, it appears, says Campbell, from Thurloe's papers, that Monk never considered the Marquess as a friend to Cromwell, but always represented him as the secret friend of the King, and an enemy to the Protector's government.†

I own these considerations, so many in number, and so powerful in argument, incline me to reject the story in Burnet as one of those belonging to his scandalous chronicles; and if so, to think Mr. Fox's opinion and language any thing but warranted by reason or the fact. If he was aware of them, he was most unjust in not placing them before his readers: if ignorant, he was at least wanting in the research and industry of an historian: and we find in it one proof more that his book is only that of a partizan, which, without the splendid authority of his name, could not be dignified with the attributes of history.

There was another reason assigned for this outrageous charge upon Monk. He acquiesced in the insults so meanly put upon the illustrious corpse of Blake, under whose auspices he had performed the most creditable actions of his life.‡ This, if Bishop Kennet's account is to be credited,—and it is to the

* Skinner's Life of Monk, quoted by Campbell. See Rose, Appendix, No. 3.

† Ibid.

‡ Fox, 21.

full as much an authority as Neale's History of the Puritans, where it is named,—is not a faithful relation. The remains of Cromwell and Ireton were insulted, and, we agree, meanly, but not those of Blake. They were removed from Westminster Abbey, but re-interred, says Kennet, with great decency in St. Margaret's churchyard.* And thus the proofs of the only two facts on which Mr. Fox thought fit to found an accusation against Monk, of the very worst kind, couched in the most intemperate language, have completely failed. It must proportionably lower his authority even as a *partizan*, for historian, with so many omissions and so many misrepresentations, we cannot allow him to be.

What credit for either the impartiality or the enlightened views of government, or even the common knowledge of things which ought to belong to an historian, can be awarded to him who calls the soldiers of a country, employed by its government to repress insurrection, by the odious name of “authorized assassins?”†

* Kennet's Histor. Register, iii. 536, apud Rose.

† We were so startled with this, that we almost believed we were mistaken; and, as others may think so too, we give the passage in question. Speaking of the disappointment of Argyle's hopes of being joined by the persecuted in Scotland, he says, “those even whose situation was most desperate, who were either wandering about the fields, or seeking refuge in rocks and caverns from the *authorized assassins* who were on every side pursuing them, did not all join in Argyle's cause with that frankness which was to be expected.” (page 197.) These men were the old covenanters and conventicle men, who were *persecuted*, (I use the word as Mr. Fox would have me) by a cruel

The admirers of Mr. Fox may attribute this to his warmth and indignation against James, though even that was not justified by any thing James had then done as King, for it is in the account of Argyle's invasion, when he was scarcely warm on his throne, where he was the undoubted legitimate monarch, and had as yet been guilty of no tyranny. But allowing that the feelings and principles of the politician ran away with the author, is it the part, is it the duty, is it even becoming in an historian,—will it not overturn all his authority, not merely as such, but as a writer pretending to any thing but the power of invective,—so to miscal, so to calumniate, the servants of their country, who only obeyed the laws in repelling insurrection, however praiseworthy that insurrection may be deemed by the calumniator?

When we read this aberration of Mr. Fox from all the most received notions of what is due to the

government, whose acts I am not the one to defend. But to call the soldiers who only executed the orders of their lawful governors, assassins, breaks down all principle, and all meaning in words. It is the rant of rioters suppressed. He might as well have called the executioner, when he does his duty, by the same name.

As to executioners, indeed, he had before called the condemnation of the military officers who had attended the trial (and of course, upon the same principle, the executioners) of Charles I., “a violation of every principle of law and justice.” (p. 24.) How then can he convert the soldiers who performed their duty to their lawful government into assassins? One of these military officers, be it remembered, Axtell, who commanded the guards at the trial, ordered his men to fire into Lady Fairfax's box, because she denied the act to be that of the whole people. He, to be sure, then, was not an assassin, only a regicide.

character of a soldier, acting in his country's service, and see him vilify such a character with such epithets, we are seized with astonishment that a mind so great, an understanding so acute, and abilities every way so resplendent in all other things, should, from the blindness of party feelings, so fail in propriety of thought. For this, and a multitude of similar impressions, we are forced to dethrone him from the place he held in our minds, and to pronounce, reluctantly, that, from very passion, his authority is gone.

We say reluctantly, because there are some passages in his book which revive all our notions of his natural disposition and the elegance of his mind, and tell us, in delightful characters, (*O! si sic omnia*) how well he deserved all that his friends said of him.*

But these gleams are evanescent: the political bias perpetual. Thus, the condemnation of Argyle and Weir, the latter for associating with a rebel whom it was not *proved* that he knew to be such, resembles, he says, more the acts of Tiberius and Domitian,

* Take for example the following of Temple, in which, perhaps without meaning, but probably not without knowing it, he portrays himself. "When he had reason to think that his services could no longer be useful to his country, he withdrew wholly from public business, and resolutely adhered to the preference of philosophical retirement, which in his circumstances was just, in spite of every temptation which occurred to bring him back to the more active scene. The remainder of his life he seems to have employed in the most noble contemplations, and the most elegant amusements; every enjoyment heightened, no doubt, by reflecting on the honourable part he had acted in public affairs, and without any regret, on his own account, (whatever he might feel for his country,) at having been driven from them."

than those of even the most arbitrary governments.* And yet he allows the sentences were not carried into effect. One escaped; and the other, he tells you himself, was reprieved. Did Tiberius or Domitian ever reprieve?

His broad condemnation of the sentence against Russell we have elsewhere considered; and his violent declamation against the King, the ministry, the court, and the jury, for the prosecution of Sidney, we are so far from blaming, that it must be shared by every lover of justice. Even that he carries it a little farther than may be precisely warranted, as well as quarrels warmly with Hume for the thinness of the veil he throws over the King in that execrable affair, neither surprises nor revolts us. Still, as usual, he pushes it too far in this,—that he argues as if the King and the government, *knowing* the defect of evidence, had planned *beforehand* all the atrocities of the lawyers. That Sidney was, at very least, as guilty as Russell, or any other of the Council of Six, (perhaps a little more, for he planned and conducted the communication with Scotland,) there can be no moral doubt; therefore there was at least moral certainty in the minds of the King and his ministers, that Sidney designed rebellion; and if so, that they should *order* his prosecution, leaving the lawyers to conduct it, is neither surprising nor blameable. There is no

* p. 48. What the phraseology exactly means I don't know. Were not the governments of Tiberius and Domitian arbitrary? Did not the murders of the popish plot equal them in injustice?

proof adduced by Mr. Fox that, in this *first instance*, they did more; and his accusation of them in that part of the procedure which concerns the evidence is therefore not warranted. I notice this, however, only to show how much of a piece, as to violence and extremes, all his censures are. God knows the objects of them here have enough to answer for; for though they might not contrive the snare beforehand, yet, after the sentence, by executing it, they made the iniquity their own.

With his attack upon the Oxford decree we have this quarrel, that even if it were (as it is not) revolting to truth, to history, and to common sense; why churchmen will “abuse the name of religion,” more than politicians or demagogues the name of liberty, when it suits their policy, we are yet to learn, and certainly shall not learn it from the treatise before us.*

A minor, but yet a fault, though belonging more to criticism as to the style and method than the matter of the work, is the comparison of the doctors of Oxford, when they framed this decree, to Dogberry and Verges, when they declared that to receive a thousand ducats for a false accusation was *flat burglary*. This, diverting over a table, is unworthy of the dignity of history; though, but for the excellent taste which Mr. Fox possessed, and the extreme anxiety he is said to have shown to keep his composition true to the

* Fox, p. 56. “Such the manner in which churchmen will abuse, when it suits their policy, the holy name of that religion,” &c. But see this fully discussed, No. vii. in the Appendix.

simplicity of remark and narration which he deemed essential to the character of an historical work, it would not be noticed.

To proceed with the examination of this storehouse of exaggeration, let us consider what is said of the memorable ebullition of Charles on the suicide of Essex, "that he owed a life to his family;" implying that he would have pardoned him had he been guilty.

Mr. Fox thinks, seemingly without a shadow of reason, though with abundant prejudice, that this declaration being made *after* Essex was dead, *and not followed by any act evincing his sincerity*, is not to be believed by men of sense.

It is plainly not believed by Mr. Fox, but why not by others? What acts would he require? "Some mark of kindness," he says, "to the relations, or some act of mercy to the friends of the deceased!" Why so? If I tell a man I am sorry for his father's death, am I not to be believed unless I provide for the son? This is going pretty far. Perhaps, to produce belief in the historian, it would have been necessary to pardon Lord Russell, or advance Essex's son in the peerage! The true answer is by a question, Did Charles, by implying that he would pardon Essex, because his father had died for him, promise to pardon any body else, or prefer Lord Essex's family? If not, why was the non-performance of what never was promised to be the proof of a sincerity, otherwise to be doubted?

The opening of James's reign is no more than characteristic of the favourite notions of the writer, but contradicted, I conceive, in the minds of most readers of history,—that the new King's ruling passion was despotism rather than popery, and that the one was subservient to the other. Hence the gratuitous assumption, always made by prejudice, that the pleasure James took in the popularity which greeted the commencement of his reign, was owing, no doubt, (why no doubt?) to its being a powerful medium for establishing his system of arbitrary power. With regard to the Roman Catholic religion, he says, it is by no means certain that he yet thought of obtaining for it any more than a complete toleration.

In the same spirit, writing of the motion for an address to execute the laws against dissenters, he says, “the *zeal for persecution* in the Tories made them fall into the snare.” Here the character for a zeal to persecute, is the assumption of the writer, for he gives no proof of it. Yet he possibly would feel, and has felt aggrieved, when any partizan on the other side has talked of Mr. Fox's zeal to unfurl the standard of rebellion. At any rate, what spirit of persecution in Tory members of parliament ever equalled the headlong infamy of the Whig persecutions in the Popish Plot, or of the Long Parliament?

In his observations on the bill for the preservation of James's person, which certainly extends the law of treason most nefariously, though it never passed, he

quits history altogether to vent a little of old House of Commons rage against some of our modern statutes, made to repress a spirit of rebellion consequent to the French Revolution. Into Mr. Fox's opposition to these, it is not our business to inquire; but the allusion to them, except as a modern partizan, in a history of James II., is extraordinary, and at least out of place. Before indulging in the insinuation at all, it would have been the duty of at least a fair reasoner to have pointed out the particular statutes for which the one in question, he says, might serve for a model. But thus it is, though in the sober character of an historian, he seems never for one moment to forget the declaimer of opposition in the House of Commons. Even the obnoxious statute had for some of its clauses, (e. g. those against the title of Monmouth) a precedent in 13th of Eliz. ch. 1., which was actually followed by 6th Ann. ch. 7. sect. 1.

When he comes to Argyle's invasion, his fondness for that unfortunate, generous, and injured, but rash and indiscreet, and may we not add *weak* man, (spite of the historian's admiration of him,) hurries him into numerous misrepresentations. These (the greatest) which regard Sir Patrick Hume, have been so perfectly refuted by Mr. Rose, in his most sensible review of Mr. Fox's history, that I can only refer to it.

What strikes one most, is the force of prejudice on account of Argyle's party and insurrectionary virtue,

which, added to his constancy under suffering, makes the historian bestow upon him the epithet of GREAT.

If rashness in adopting an ill-concerted expedition to invade his country with fire and sword, in revenge for his own personal injuries, and to recover his private fortune,—if the very weakest and most imprudent conduct in pursuing it,—if obstinacy, impatience, improvidence, and vacillation,—can entitle a man to the appellation of Great, he certainly deserves it. His faults, indeed, are much redeemed by his generosity, his openness, and the manly fortitude as well as calmness which he shewed in his last trials; but greatness is the last character which the truth of history would award him. Even Burnet makes but poor account of him, and says, “it appeared that he was not made for these designs.”*

We can, however, account for and excuse the highly-charged colouring which Mr. Fox has given to many points in his account of him. He was amiable, honourable, and brave; which is enough to create the interest with which a man who was himself all three regards him; and he suffered in attacking James, which is quite enough to explain Mr. Fox's partiality; but not enough to justify his torturing language, to add one more exaggeration to those already enumerated of the sins of the tyrant.

The warrant for proceeding to extremities against Argyle is surely no more than any King who had defeated an insurrection against himself would have

* Burnet, i. 633.

issued. It directs that *all ways* should be taken to know from him those things which concern our government most, as his assisters with men, arms, money, his associates, correspondents, designs, &c.

This, to a plain man, would surely convey nothing extraordinary, nothing cruel, or even tyrannical. But because torture was allowed, and had been inflicted by the law of Scotland, be sure, in the mind of Mr. Fox, the words "*all ways*" must mean the rack, the thumbekins, and the boots. If such had been the intention, might it not have been left to the administrators of the law; or, if they wanted quickening, would so cruel a tyrant have left it to so vague a hint? Would it not have been expressed without ambiguity? The best answer to the accusation is, that the hint was not taken, and that Argyle was not tortured. But Mr. Fox's prejudices never exhibited themselves so glaringly, and, may we not say, so weakly, as in this account.

Assuming, as usual, conjecture as true, and that torture was clearly ordered, he enters into a grave and solemn question of "the cause of this seeming disregard to (what he chuses to call) the *royal injunctions*."* He assigns many *possible* reasons for it. James *might* be struck with remorse! But then there is no trace of this! How should there, if the torture was never ordered? Then the managers themselves *might* have had sympathy for one of their own order, which they showed not to men of inferior station.

* Fox, 217.

Ingenious, but no proof even attempted; and contradicted withal by the horrible torture inflicted by Whig tyrants upon Montrose in the prolongation of his death.*

In pursuing the history of Argyle to his lamentable end, there seems most extraordinary and unwarrantable reasoning upon an interesting anecdote transcribed from Woodrow.

The Earl had dined and conversed calmly with Mr. Chatteris, and had retired to get some sleep. This was just before his execution. While on his bed, one of the council who had ordered his death desired to speak with him, and disbelieving the attendant, who told him he was asleep, was shown, through a door, "in a sweet and tranquil slumber, the man who (Mr. Fox says,) by the *doom* of him and his fellows, was to die within the space of two short hours."

The counsellor, it is said, struck with the sight, precipitately left the castle, and hid himself in a friend's lodgings, where, flinging himself on the first bed that presented itself, he had every appearance of suffering the most excruciating torture. His friend, thinking him ill, offered him wine, but he refused, saying, "No! no! that will not help me: I have been in at Argyle, and saw him sleeping as

* He was ordered by the then Whig government, and the order was obeyed, to be half hanged repeatedly till life was spent. See Carte, iv. 630, apud Rose.

pleasantly as ever man did, within an hour of eternity. But as for me, ——”

Upon this anecdote Mr. Fox absolutely revels, in the triumph of what we will allow him to call a Whig hero, over what he is most unjust and bigoted in representing as a Tory oppressor. “Who is there,” he says, “that would not *wish* this to be true? What a satisfactory spectacle to a philosophical mind! To see the *oppressor*, in the zenith of his power, envying his *victim*! What an acknowledgment of the superiority of *virtue*! What an affecting and forcible testimony to the value of that peace of mind which innocence alone can confer! *We know not who the man was*; but when we reflect, that the *guilt* which agonized him was *probably* incurred for the sake of some vain title, or at least some increase of wealth which he did not want, and possibly knew not how to enjoy, our disgust is turned into something like compassion for that very foolish class of men whom the world calls wise in their generation.” *

Now, if it be fallacious to take a number of conjectures for granted, without the smallest foundation for them stated, every line of this eloquent burst is nothing but fallacy.

Respect, alone, for Mr. Fox, prevents one from calling it by its right name.

With a want of skill, (if he sought an opportunity to be pathetic,) which is surprising, he tells you that

* Fox, 220.

the very name of this member of the council is unknown. "We know not," says he, "who this man was; and the truth of it may, therefore, be fairly considered as liable to that degree of doubt with which men of judgment receive every species of traditional history."* Thus, in the outset, he tells you that not one word he writes is to be taken for granted.

Indeed, if it were otherwise, and the man known, what is imputed to him is obviously an unsupported calumny.

It is a charge branching into a variety of details, without even an attempt at proof.

Yet Mr. Fox, for himself, and, still more, his noble editor for him, claim, nay, make it their pride, that he was anxiously strict in hazarding nothing but what was carefully sifted to the bottom before it was admitted. Here, to be sure, it is not asserted that all the suppositions are proved; but the glowing declamations upon them are good for nothing without that proof. Yet, even *if* proved, why was this counsellor an oppressor? Because, being a judge, he fulfilled a judge's duty, in awarding the sentence due to treason?

How does it appear that Argyle was *his* victim?

How, that he *envied* him.

Every thing is assumed for the sake of the declamation.

* p. 219. He adds, however, the *belief* of Woodrow, who says he had it from unquestionable authority. Woodrow ought to have told his authority.

It is assumed, that what agonized him was *guilt*. It is assumed, that he incurred that guilt for a vain title, or increase of wealth. It is assumed, that he probably did not want either; it is assumed that he possibly knew not how to enjoy them! Upon the whole, there never was such an instance, in the history of the mind of man, how totally genius and imagination may be bereaved of judgment, and therefore forfeit all pretence to authority, as in this ebullition, which would justify Hamlet's exclamation—

“ He tears his passion all to rags.”

But there is another charge against Mr. Fox.

He says, (again assuming the *motive*, that he may blacken the parties,) “ In order that the *triumph of injustice* might be complete, it was determined that, without any new trial, the Earl should suffer upon the iniquitous sentence of 1682.” *

Here, then, we see that to punish a man as a traitor who is taken in arms against his country, is, in the mind of Mr. Fox, *injustice, per se*; for it is here only aggravated by referring to the sentence of 1682.

That reference, in Mr. Fox's mind, made it more complete, but the fact was already injustice.

Will Mr. Fox's private opinion on the right of insurrection deliver him from this?

If Argyle was right, because he thought the country oppressed, every man who rebels is right, for no doubt he thinks so too. And then in Mr. Fox's opinion it is unjust to punish treason. Burnet, how-

* Fox, 218.

ever, who recounts the reasons for his invasion, given by Argyle himself in his last moments, makes no mention of the wrongs of the country, nor of any wrongs but *his own*.

“He *justified*,” says he, “all he had done.” How? By any tyranny of James after he was King? No! Because “he had been unjustly attainted by *Charles*, which had dissolved his allegiance; so it was justice to himself and to his family to endeavour to recover what was so wrongfully taken from him. He also thought that no allegiance was due to the King till he had taken the oath, which the law prescribed at the coronation.”* So, then, Mr. Fox’s patriot hero rested his cause on his own personal wrongs; and is withal a madman, who tells you, that until the King is crowned and takes the oaths every government is dissolved, and every subject who has any thing to complain of may take arms against his country!

Was Argyle right, then, in Mr. Fox’s mind, in denying James’s title to the throne, which he derived from his ancestors, and on which he was seated but a few months before with the fullest approbation of all the organs of the people?

What but madness, or rebellion for rebellion’s sake, could make this sanguine indiscreet man declare war upon “James Duke of York and Albany,” as if he was not King of Scotland?

What refinement of metaphysics, what scheme of

* Burnet, i. 632.

the rights of man, could justify, or even explain this to common sense? How then will Mr. Fox justify his assertion, in calling the resistance to Argyle unjust? For if his punishment was unjust, his enterprise was just; and it would have been unjust to oppose him.

Of all the futile, as well as dangerous opinions which Mr. Fox exhibited in the course of his life upon popular questions, this upon Argyle's expedition seems to be the most dangerous, most futile, and most indefensible.

But, farther, Mr. Fox seems ignorant of what he must have known, that a man lying already under sentence for one treason, cannot be tried and sentenced again for another.

Argyle had already been condemned, and, I will allow with Mr. Fox, most iniquitously condemned; but being condemned, no *new* injustice was committed in not executing him on another sentence, which, had he been tried, he legally deserved. Would it have softened his death to have granted him a pardon for the first crime, in order the next moment to behead him for the second? It was the case of Sir Walter Raleigh over again, which, though it might be execrable and hard, was neither the one nor the other in point of form. He had before been condemned for treason, and though the sentence was not executed, liable to be so at any moment.

The hardship was in being allowed to remain fourteen years with the axe suspended over his head, after which the sentence seemed virtually remitted,

by his being released from prison and entrusted with a command.

Notwithstanding this he was kept liable in law to the execution which finally was inflicted.

In this situation he had committed new crimes, and might have been tried and condemned for piracy*, but the law interposed, and claimed him as a man already doomed, and not therefore triable. Do I defend the driveller who kept the law so long in force against him? God forbid!

But not the less would it be unjust to say, that if punishment for his second offence was deserved, the fulfilment of the forms prescribed by the law was the "*triumph of injustice.*"

Mr. Fox winds up the account of the last moments of Argyle with a prayer, in the very spirit of a disciple of insurrection against a lawful King, which James, who had then committed no great act of tyranny, certainly was.†

* The name of Raleigh is so splendid, that the mind is unwilling to contemplate the dark spots in his character. Many there were, which it is not necessary here to dwell upon. But with regard to the case which enforced the former sentence upon him, after reading Hume's most able analysis of it, there can be no doubt of his guilt.

† He had for a few months after his accession, till parliament met, levied the excise and customs of his own authority, and that in a most ungracious and arbitrary manner. But they were all regularly given to him about the very time of Argyle and Monmouth's invasion. Neither of them mentioned, possibly did not know, any thing of this act of tyranny. But if they had, would it have justified insurrection? Then general warrants would have done so in the time of George III.

“Such,” says our historian, “were the last hours, and such the final close of this GREAT man’s life. May the like happy serenity in such dreadful circumstances, and a death equally GLORIOUS, be the lot of all *whom tyranny, of whatever denomination or description, shall in any age or in any country call to expiate their virtues on the scaffold.*”*

Thus, it is tyranny, in Mr. Fox’s opinion, to try and execute a rebel taken in arms against his lawful sovereign. How will he defend the many executions in the reigns of William and the House of Brunswick?

But even with red-hot fervour, such as was in the mind of a Sidney, a Ludlow, a Madame Roland, or a Mrs. Macauley, with all the partial zeal shown by Mr. Fox himself against the Stuarts, it is not possible to warp a mind of the commonest judgment into the opinion that Argyle’s expedition was justifiable by any law, even of nature or self-defence, setting the law of the land wholly out of the question.

For it cannot be too often impressed, that at the time of the invasion James had done nothing to excite revolt in the least loyal of his subjects.

Even Wildman, that rough commonwealthsman, praised for being one of the very few who objected to the Prince of Orange’s declaration, as not containing the true grounds of the invasion; even *he*, in a declaration framed by himself to correct

* Fox, p. 222.

the other, did not count much upon the acts of tyranny in James. He even allowed the dispensing power, and fairly avowed, that though it had of late been stretched too far, the stretching of a power that was in the Crown was not a just ground for war. He added, that the King had a right to bring any man to trial; that the Bishops had had one, and were acquitted and discharged; in all which there was nothing contrary to law.*

James, then, according to his greatest enemy, even at the time of the Dutch invasion, much more, therefore, at that of Argyle, was a King, and no tyrant; and unless to be a King, in Mr. Fox's mind, is to commit sin, and therefore be liable to be cut off by the sword of a subject, Argyle, with all his *virtues*, was a traitor. Nor had his treason the excuse which alone could ennoble it,—resistance to a tyrant for breaches of the law.

From his own dying declaration, he only sought redress for his own private injuries; and for this he was ready to deluge his country in blood.

If his death, therefore, was *glorious*, in Mr. Fox's eyes, there is no rebellion which in his opinion may not be glorious, defended, practised, praised, and ap-

* Burnet, i. 780. Wildman's view was upon a far more extensive principle than that of mere self-defence.

He seems to have been actuated by Mackintosh's doctrine of a REFORMATORY REVOLT.

The Whig Bishop himself is forced to say of this period, that, "the King had not yet done that which would justify extreme counsels." i. 629.

proved; for no rebel but could find reasons equal to those, whatever they were, for supposing James II. was only Duke of York, and not King of Britain.

Upon the whole question of Argyle, if it was Mr. Fox's object to interest us for him under his hard fate, he has succeeded; but he would have interested us more if he had attempted less.

By endeavouring to prove too much, he has weakened our sympathy for Argyle as a patriot, and our admiration of him as a hero; and, what is more, has weakened his own authority as an historian, an observer of men, and a guide in constitutional law.

MONMOUTH'S REBELLION.

In narrating the progress of Monmouth's rebellion, our illustrious champion for the cause of insurrection, has not the same scope for enthusiastic declamation as in the case of Argyle. For Monmouth, the weakest of men, though personally brave, and equally amiable, had not the same injuries to complain of as the chief of the Campbells, nor were the circumstances of his death attended with so much interest. He seems to have been the tool of the Whigs, who must have thought him a convenient instrument for their purposes, when, to try what a beautiful person could do for them in exciting the people against his father's government, they sent him to make a progress in the western midland counties, under what pretence, except as an experiment of his title against

that of the true heir, James, it would perplex the wisest of the historians to determine.

Yet if this were so, there was not a Whig among them that did not wilfully deceive his own heart, for not one of them ever presumed to assert, in public at least, that Monmouth was the true heir to the Crown.

The progress, therefore, of the Whig Duke, was either a piece of unmeaning vanity, or the effect of a deep-laid conspiracy by the Whigs to effect that by falsehood (in the same manner as they did in regard to the real Prince of Wales at the Revolution,) which they could not procure by fair exertion, the exclusion of the Duke of York.

This having failed, and Monmouth in exile, after the miserable exhibition he made of his feebleness in the Rye House plot,—now confessing, now retracting, now asking pardon, now bullying, it was yet thought best by the malcontents to retain their hold over him, and, though they were not generous enough to join fortunes, to maintain correspondence with him and elevate his hopes, on the chance of their being realised upon some future occasion.

The poor Duke was therefore cajoled into an enterprize, for which he was not only totally unfit, but which he himself disapproved, and for which there was not the slightest pretence. We may say, indeed, of him, as Falstaff said of Worcester,

“ Rebellion lay in his way, and he found it,”

It is neither necessary, nor is it my intention, to revert to the details of a career so well known, except to attend upon Mr. Fox in his few observations upon it; remarking only, in the outset, that it is difficult for any sober person, not absolutely in love with the doctrine of a REFORMATORY REVOLT, to fabricate arguments, any thing like satisfactory, on the ground of injured rights, which could justify this unfortunate man in an invasion of James. Even if he had been at the head of a powerful army, and invited by powerful demagogues in England, much more with the contracted means he possessed, and the total want of preconcerted plan, or reasonable expectation of an effective support after he should land, the question in limine occurs, on what pretence was this enterprize undertaken? If only with a view to destroy tyranny, in what had James then shown himself a tyrant? In what had he oppressed? In what was his title defective?

Unless Monmouth had set up his own title against his, which, in his secret heart, he believed was just, for so he declared it;—unless he absolutely aspired to the crown, as he afterwards did, spite of previous disavowals,—it is absolutely embarrassing to ingenuity itself, much more to common sense, to find the remotest plea to justify the undertaking. It is certain Mr. Fox is not able to furnish any such plea.

This is important to consider, because Mr. Fox seems not to conceal that he approves the expedition.

In speaking of Sir Patrick Hume, one of the most active advisers of Monmouth to the measure, he says, he was “looked upon as a principal ally by such of the English *patriots* as had at any time entertained thoughts, whether more or less ripened, of *delivering* their country.” *

Delivering from what? The having levied the customs of his own authority till parliament met and gave them to James,—the chief or only stretch of power he had shown.

But will even that justify an invasion by his own subjects?

Yes! says Mr. Fox, for, speaking of Burnet’s disapprobation of Monmouth’s views, he observes, “It is difficult to accede to his opinion, that, though particular injustices had been committed, the misgovernment had not been of such a nature as to justify resistance by arms.” † According to Mr. Fox, therefore, James ought to have been dethroned, or at least have been exposed to an invasion, for doing a thing, afterwards allowed, in a wrong manner; and those many acts for which a minister so frequently and so easily obtains an act of indemnity, justify immediate insurrection. Yet he allows, that, to justify resistance, the cause of the insurgent must be “*intrinsically* just.” Such, then, must have been the cause of Monmouth, in the opinion of one who is held, by a large and respectable party in the nation, to have been one of her

* p. 173.

† p. 184.

most enlightened statesmen. And yet he blames, in the terms which such wicked folly deserves, the manifesto issued by the Duke on his landing, accusing James of burning the city, murdering Godfrey and Essex, and poisoning his brother, as well as asserting his own right to the crown. He, (Mr. Fox,) therefore, would have made a better manifesto; and to have seen how he would have penned it would have edified us in the science of democratic policy.

Would it have begun thus? "Whereas myself, and Sir Patrick Hume, and Sir John Cochran, and Fergusson, had all endeavoured to rise against King *Charles*, but failed; for which, in fear of the unjust laws that punish treason, we have become exiles in the time of King James; therefore King *James* ought to be dethroned."

Or would it have been, "That whereas there is no law preventing a Papist from being King of England; and King James is a Papist, therefore he ought to be dethroned?" Or perhaps, or best of all, "Whereas the Kings of England take certain oaths at their coronation, and therefore, before they take those oaths, they are not Kings of England, and the subjects owe them no allegiance: and whereas King James was some months before he was crowned and took the said oaths: therefore, although he has now taken them, he ought to be dethroned?"

This was very little different from the declarations Argyle, and others of the invaders; but would

this, we may ask, have satisfied those Whigs who did not join Monmouth, better than the proclamation he actually published?

For this backwardness in the Whigs seems to surprise Mr. Fox; and he endeavours to account for it, by saying, "Their present coldness *might* be imputed to the indistinctness of his (Monmouth's) declarations with respect to what was intended to be the future government." *

Thus, then, that James's government ought to have been overturned, though he had been only a few months on the throne, and his first parliament only commencing their duties, seems, in Mr. Fox's mind, to have been no more than an acknowledged principle of the Whigs, and of course his own, provided only that they had known what was intended as to the future government.

With great submission to Mr. Fox, he might, without much offending the patriotism of the Whigs, or the justice of the case, have given a better reason for their neutrality, in their loyalty and good sense; — loyalty to a lawful sovereign, who was *as yet* not a tyrant; — good sense, which saw through the total want of justice in the invasion, and the imbecile character of its leader.

Imbecile as he was, and imprudent in claiming the crown, that claim was at least a more intelligible reason for the invasion than any that had been urged

* p. 245.

by Argyle. When he himself, indeed, in Holland, expressed to those who persuaded him to the expedition his doubts of success from the paucity of his numbers, he was reminded, in answer, of the few followers by whom Henry IV. was attended when he landed, and yet his success was complete.

Mr. Fox, however, preferred the *Whig* reasons, which actuated, he says, a part of those who joined him, who considered the destruction of *James's* *tyranny* as the object *which, at all hazards and without regard to consequences*, they were bound to pursue.

This phantom of tyranny glares perpetually upon Mr. Fox, whether in existence or not. For James, as we have observed, had then reigned but a few mouths; he was only just crowned, and he was then busy with his parliament: and yet one would imagine, from this raised mode of expression, that he had cut off thousands of heads, and levied millions of money, by his sole will and arbitrary power.

I own, in this common place invective, though I see abundant proof of the partizan, I look in vain for the statesman, or that searching mind and overwhelming power of argument which all justly allow to Mr. Fox.

As it was no part of the plan of these strictures to pursue the details of Mr. Fox's historical work as facts, but only such observations as he makes upon them, which appear unwarrantable, from the strong bias of his mind; and as he closes with the death of Monmouth, which now fast approaches, little remains

to be added but a few notices of sentiments and expressions of the same nature as those we have already enumerated.

His excuses for Monmouth's errors, weaknesses, and instances of pusillanimity, are very poor; nor was he bound to make them as an historian; but, being a Whig, the history is made secondary, and to defend the character of Monmouth as a *deliverer*, is made the chief object of the disquisition, while his injustice as an invader is not remembered. In a sort of exculpatory tone, therefore, as if it was almost merit, he says he was a man against whom all that has been said by his most inveterate enemies, both to him and his party, amounts to little more than this,—that he had not a mind equal to the situation in which his ambition placed him. Burnet says he was gentle, brave, and sincere, to which we add generosity; “and surely those qualities go a great way in making up the catalogue of *all* that is amiable and *estimable* in human nature.”*

Allowing the amiable, with submission, this by no means goes a great way to *all* that is estimable. Fortitude, resolution, decision, resource, and, above all, truth; independence of the flattery or cajollery of others; in short to be *justus et tenax propositi*;—in all these he was lamentably deficient. His submission to the counsels of others, even after they had proved themselves unworthy, had the weakness of a child, particularly in the case of the infamous

* p. 287.

Lord Grey ; upon which, and this whole part of his character, the language of Mr. Fox, from viewing him, no doubt, chiefly as an unfortunate Whig, is remarkable.

“ One of the most conspicuous features of his character,” says he, “ seems to have been a remarkable, and, as *some think*, a *culpable* degree of flexibility.”

As *some think* ! Does Mr. Fox, then, *doubt* that this flexibility, which drove him into such a rash and unlawful undertaking, which caused his own ruin, and shed the blood of thousands, is culpable to the highest degree ? Or do Whiggery and the insurrectionary spirit salve this ?

He goes on still more extraordinarily with the apology ; and, with a zeal which does not, however, conceal the fallacy, observes,—what bears nothing upon the question,—“ that such a disposition is preferable to the opposite extreme will be admitted by all who think that modesty, *even in excess*, is more nearly allied to *wisdom*, than conceit and self-sufficiency.” Well ! It needed not the authority of Mr. Fox to make this discovery. But how does it defend Monmouth ? Was it excess of modesty that made him create himself King, and by so doing break all his promises to his best friends ? Was it excess of modesty to accuse James of what he knew to be false ? There is even ridicule attending the application of this sentiment by Mr. Fox.

But this modesty is allied to wisdom. Was it wisdom, then, that made him undertake an enterprise, having

for its object nothing less than the revolt of nations, and the dethronement of kings, and yet to act like a baby in leading-strings; swayed from his purpose at every turn, and obeying the suggestions of every fool, every knave, and every coward?

Mr. Fox says, that “a willingness to be convinced, or, in some cases, even *without* conviction, to concede our own opinion to that of other men, is among the *principal* ingredients in the composition of practical wisdom;”* and for the illustrations of this sentiment, he instances the *sagacity* of Shaftsbury, the honour of Russell, and the genius of Sidney. Against the *honour* of Russell not a word can be said. But as for the sagacity of Shaftsbury, what did it do but murder Russell and destroy himself? The greatest rogue of his time, he would have made Monmouth, first a robber†, next an incendiary; as Sidney would have made him a republican. Poor Monmouth would have been well off by conceding his own opinion, *against his conviction*, to such illustrious guides. This whole passage astonishes, from such an able head as Mr. Fox, particularly in his admiration of the *sagacity* of this violent rebel. Burnet, at least, had a different opinion, and knew men. He says Monmouth gave himself *fatally up* to Shaftsbury’s conduct.

But let the abstract principle laid down be true;

* p. 287.

† He went headlong with the iniquitous Cabal, and, if not the author, concurred in the scheme of shutting up the Exchequer. As it was, Burnet says Monmouth gave himself fatally up to him.

then it was wise in Monmouth to be governed by such a knave as Fergusson. It was wise, being a man naturally of truth, honour, and sincerity, to adopt and publish the most atrocious accusations against James, which, Mr. Fox himself says, he *knew* to be false. It was wise, having had the strongest proofs of Grey's cowardice and incapacity as a soldier, (himself the bravest of soldiers,) to continue him in the most important and trustworthy command he had to give ! Does Mr. Fox cure this absurdity, this weakness, by saying that he "had suffered flexibility, so *laudable in many cases*, to degenerate into a *habit*, which made him often follow the advice or yield to the entreaties of persons whose characters by no means entitled them to such deference." As well might he apologise for drunkenness, because an original love of liquor had been suffered to degenerate into a habit ! He adds, too, (*mirabile dictu !*) that the partiality of friendship, and the conviction of his firm attachment, might be some excuse for his listening so much to Grey ; a man whom, be it observed, Mr. Fox had before represented as deeply stained, and known to be so, with private vices.

All this laboured apology, drawn from abstract truisms, may explain, but never can defend, the conduct of the poor weak nobleman, which caused so much woe, both to himself, and the many victims of his criminal ambition, disguised not even in the shape of specious patriotism. To elevate him into the character of a hero, instead of being a tool, baf-

fles the genius, and, what is more, even the party spirit of Mr. Fox, who has toiled to procure for him the approbation of his readers, and toiled in vain.

And yet, if the death of Argyle was *glorious*, because he perished, as is said, in the cause of liberty, on the scaffold, I see not that the death of Monmouth was not equally so. For both equally perished on the scaffold, and both in the same cause,—whether of liberty or not, is another question.

No one, indeed, can charge Argyle with the *practical wisdom* of conceding his opinions to others, for his obstinacy and jealousy are imputed to him as mainly contributing to his destruction. But, in other respects, may not the Duke's case vie with his, and equally challenge the praises of posterity, at least in the opinion of Mr. Fox?

Both affirmed themselves to be *intended deliverers* of their country; from what acts of tyranny by James, both failed to point out; both denied James's title to the crown, declaring they made war on the Duke of York, who was therefore a usurper; both had private injuries and objects which had nothing to do with the country,—the one wanted his estate, the other the crown. Again, both were equally and absurdly remiss in preparing for so vast an undertaking with such inefficient means. Both trusted to chance, and both found the chances against them. Finally, both failed, as might be expected, and both lost their heads without the intervention of a jury,—the one by a former sentence, the other by an act of attainder.

If this be not a comparison quite worthy of Plutarch, it is at least made up of home truths; and though Argyle showed much of real heroism in his prison, redeeming many of the faults he showed in the field; and Monmouth, whether in field or prison, was no hero at all; yet still, in the visions of party enthusiasts, they were equally esteemed the victims of oppression, and therefore equally entitled to places in Mr. Fox's temple of fame.

Mr. Fox, in his attempt (with what success we have seen) to canonize the Duke, will not allow of any *advocatus diaboli*, and therefore is angry with Echard, and sneers at Burnet, for some of their expressions concerning him in his last hours; and the divines who attended him have at least their full share of that sneer.

Monmouth's well-known letter to James implores mercy in terms any thing but worthy a great and patriotic champion of an injured people. He looks upon his attempt with horror, and abhors those who put him upon it. In short, spite of Fox's excuses, he is any thing but a Sidney, or a Brutus. This letter, Archdeacon Echard calls, and, as I think, truly, after such outrageous accusations, pusillanimously submissive; which Mr. Fox says, was, perhaps, not so *seemly* in a *churchman*.

Why a churchman may not judge of pusillanimity as well as another, I know not, nor can I conjecture a reason for the insinuation against Echard, unless the hope expressed by Monmouth, in addition to

meaner topics, that God would strike the King with compassion, makes it unseemly in a churchman to meddle with any part of such a composition.

In regard to other incidents, more interesting as concerning domestic morals, there is the same indefensible partiality to remark upon. Monmouth's notorious and open adulterous connection with Lady Harriet Wentworth, who might certainly have loved him with the tenderness of a wife, but who as certainly was nothing but a mistress, is at least spoken of without blame. The sophistries, indeed, with which they disguised their offence against the moral decencies of life are not even observed upon; and yet when the injured real wife is introduced on the scene, she is dismissed with a harsh, and underserved sarcasm.

Noticing the account of her visit to her husband in prison given by Burnet, that they met, and parted very coldly, Fox says, "it is a circumstance, which, if true, gives us no very favourable idea of the lady's character." Good God! Why? Is no allowance to be made for a woman of a character never reproached; a real wife, who had endowed him with princely riches, but whom he had early wronged, cast off, and, as far as possible, disavowed, while he *pocketed her fortune*, under pretence that he had been too young to have had a free choice, and therefore transferred that choice to another woman, and openly maintained it to her face! One would have thought that the known good nature of Mr. Fox alone would have spared this remark.

But to such lengths will indifference, or hostility to legitimacy, carry us.

Again, and to have done: in speaking of Tennyson's visit to the Duke, and Burnet's account of the manner in which he expostulated with him upon his crime, he says, "that that divine did (not his duty, but) what the right reverend historian *conceives* to have been such, in a less peremptory manner than the others." If this mean any thing, it means that a clergyman, sent for expressly by the condemned himself to prepare him for death, ought not to have thought it his duty (his crime being treason) to set the heinousness of it before him.

In the same spirit he makes it matter of grave surprise, and therefore of blame, against the other divines who attended him, for being so intent upon doctrine that they did not exhort him to retract the calumnies of his manifesto.

The answer is clear: as no man believed the calumnies, it was not necessary; but it concerned James, and the community too, that doctrines so subversive of public security as those declared by the invaders, should be publicly disavowed. The thing is not of much consequence, and it is only noticed in order to show how entirely, from first to last throughout his performance, Mr. Fox has sacrificed to party feelings.

His words and sentiments in this parting observation (for here the history closes) are quite as remarkable as anywhere else.

“They were so intent,” he says, “upon points more immediately connected with *orthodoxy of faith*, that they omitted pressing their penitent to the *only* declaration by which he could make any satisfactory atonement to those whom he had injured.”* Now I do not defend the pertinacity of the divines, which was unfeeling and almost cruel. But the orthodoxy of faith, that is, of *religious* faith, was scarcely in question. It was the political creed of resistance to the government which was the chief object of those upon whose attempts Mr. Fox has made this remark.

And thus, the closing remark in this eventful history amounts to this,—that when a traitor invades his country on false, because unfounded pretences, and avows penitence, personal slanders (not credited and not credible,) are the *only* things for which he is to express his sorrow, and not the right claimed, to arm against his lawful sovereign, whose title he had disputed.

Upon the whole, with every possible deference for this great intellect, and every possible respect for his sincerity in his principles, as well as admiration of the beautiful parts of his character, are we far wrong in thinking that the political principles laid down, the sentiments hazarded, and the criticisms indulged, both upon events and characters, in his history, are not SUCH as establish Mr. Fox’s claims to impartiality as an historian, any more than they will add to his reputation as a practical statesman, a philosophic observer, or a constitutional lawyer?

* p. 290.

No. V.

THE OPINIONS OF LOCKE.

THE intellect of this great man was so profound, his reputation as a reasoner so deserved, as well as so widely extended, and the knowledge which he brought to any subject so exact, that even if he were not, as he is, the head and father of those doctrines which we are examining, it would be a sort of cowardice, as well as an unpardonable disrespect, if we did not notice them. Certainly, if the arguments against the tenets we oppose are, as they ought to be, sound, it is not a name, however high, that will upset them; truth must prevail, even against authority; and if our notions are true, he who has not been afraid of venturing to question Fox or Mackintosh, ought not to flinch in examining Locke.

This venerable name fills every one who has heard it with respect and deference; for ability and integrity, however, more, perhaps, than impartiality. The friend, confidant, and admirer of such a rash incendiary, as well as volatile genius, as Shaftsbury;—himself, too, an object and instance in his own person of, possibly, the most shameful and arbitrary persecution, though not the most important, that disgraced the reign of James;—could not, perhaps, have approached the subject of resistance to tyranny altogether without strong preconceived notions, not favourable to dispassionate or calm inquiry. He

had not, indeed, like Fox or Mackintosh, been so accustomed to the Pythian violence, which always and necessarily belongs to public declaimers on popular subjects; but it is not unfair to suppose that the honest opinions of his mind borrowed both fancy and vehemence from zeal, kindled by personal feelings, in addition to all that was excited by the spirit of the times. Accordingly, though we must allow for, we must not shut our eyes to those extreme and Utopian notions of the power and exactly defined rights of the people, and the subserviency of sovereigns, which belong to the celebrated Essay on Civil Government.

With his preliminary essay, demolishing the rope of sand, as he justly calls it, with which Sir Robert Filmer endeavoured to bind up the system of the divineright of kings, and the derivation of monarchical power from Adam, we can have no quarrel. On the contrary, as that system has long been considered, and deservedly, (to use a phrase of Swift's when he triumphed,) down among the dead men, so inconceivably prevalent was that doctrine in those days, that the world were obliged to the great abilities of Locke for stooping to refute it.

But the second essay, upon the general nature of government, and the many startling consequences which Locke derives from his premises, as well as the premises themselves, are a very different matter. I am not going to review or analyze this treatise at large, but will merely examine a few of its leading

principles, and the results which he makes to flow from them practically considered.

Eminently, in the first place, must we notice his theory of the state of nature, as it is called, or a state, as is supposed, where each individual man, lord of himself, lives, acts, and resolves in a manner wholly free from all social law or the restraints of civil polity. The *natural* liberty of man, he says, is to be free from any superior power upon earth, and not to be under the will or legislative authority of man, but to have only the law of nature for his rule.*

By his favour, I should say this was the character of a wild beast, certainly of a mere wild man, who never knew the relations of kindred, or that there were other men in the world, rather than of a being, though living only in his nature, made for marriage, and to create a family.

This state, however, is said to be that of perfect freedom,—to order our actions, and dispose of our *persons* and *possessions*, as we think fit, within the bounds of the *law of nature, without asking leave, or depending upon the will of any other man.*†

Upon this our first remark is, that the whole supposition is assumed. In the body of this work we have already asked, was there ever such a state?

* On Government, 189. Lond. Edit. 1821. And again, 269. “Men being by *nature* all free and independent, no one can be put out of this estate, and subjected to the political power of another, without his own consent.”

† On Government, 189.

Could there ever have been such a state? Unless the world had been peopled by dragons' teeth, like Jason's field, every one of which produced a full-grown armed man at once, we say it could not be. Those who believe the Bible account, or who, without that account, think (as is likely from the history of nations) that mankind sprang from a single pair, say it never was.

It is quite evident, that if Adam was the *only* as well as the first full-grown man in the beginning of time, and if Eve brought forth mere infants, as at present, and not adults, that there could not, for many years at least, have been such a state. The children, as Locke himself allows, must have obeyed their parents; and thus the family, from the beginning, would have been always in a social state, of which the father would have been absolute master, without a thought of natural rights, whether of liberty or resistance, on the part of its members. And though in process of time the children grew up, and branched off, becoming themselves fathers of other children, which would form other families, independent, possibly, but not necessarily so, of one another; yet each of these families, granting them the utmost latitude of independence, would form so many civil societies or polities, in the same manner as there are now in the world a number of small distinct states, which acknowledge no chief but their own; but the individuals of which are by no means masters

of their actions, persons, or possessions, to dispose of them as they please, without the restraints of law.

Nor is there any reason to suppose,—no proof of it at least is offered, (on the contrary, the probability lies the other way,) that each of the sons of Adam, and each of their sons, *ad infinitum*, would thus branch off regularly as they came to manhood, so as to form that tribe of solitary individuals which this far-fetched hypothesis supposes; which, if it is not so, this darling notion of our popular theorists, of an actual polling of every man's consent to choose this or that system of government, must be given up. And though, undoubtedly, as the world came to be peopled, there must have been, and were, instances of an *election*, by independent families, of chiefs or governors (usually military ones), and sometimes lawgivers; yet, for a long time before those elections were made, it is presumable that mankind remained under the paternal or patriarchal government; and, consequently, the scheme of *universal* freedom from every law but a man's own, is an imaginary state which never existed.

Against this presumption, Locke asks, with something like triumph, whether all independent princes are not at this moment in a state of nature one to another? “Hence,” he says, “it is plain the world never was, nor ever will be, without numbers of men in that state.”*

* p. 198.

With submission, this is no answer; for the question is not, whether *some* men may not have been, or are not even now, in a state of even the wildest independence? but whether *all* were so before the institution of governments? According to us, from the moment the first man and woman agreed to live together, government began, and continued ever since, wherever there were men and families: and though the heads of families might be, and often were, independent of one another, yet as these, from the premises, never coalesced in a community, the precedent of consent to constitute a sovereign never could be tried, for such sovereign, as to them, never existed.

Yet, even these heads of families, whom we may call sovereigns, were not such despotic masters of themselves, or so independent of one another, as Locke supposes; for they were all governed by a law of nations, such as it was, but to which they never consented in form; and this law, in many instances, according to the Scriptures, was the revealed law of God.

With these Scriptures, Locke himself deals plentifully to prove *instances* of the consent he advocates. He is driven for it also to the Brazils, and other Indian nations; and he quotes the colony led away from Sparta by Palantus, recorded in Justin, to show that there have been early *examples* of such consent. Does any body doubt that there are such examples? The fact is not denied. The only wonder is, as it is to prove a

universal law, (which the law of nature must be,) that the examples are not greatly more in number; nay, that they are not exhibited by every early government under the sun. But could they be multiplied tenfold, very far would they be from amounting to what this fanciful theory requires; namely, that by the *law of nature*, (which must be gathered from un-deviating and innumerable facts,) consent *in form* by *all* the individuals of a commonwealth, is or was ever necessary to establish a *lawful* government, so that no government is lawful without it.* In his very first page he says, that William's title is the consent of the people, "*which being the only one of all lawful governments*, he has more fully and clearly than any prince in Christendom."

Thus, the succession of our princes from King Egbert, which had continued near 800 years; of the houses of Oldenburg in Denmark, and of Capet in France, which had existed for nearly as many; and even of the Emperors, who were always by election, (though of sovereigns like themselves, and therefore, of course, NOT PURE,) — these were all unlawful governors, and usurpers upon the people's rights.

Certainly, where such formal consent has been given, the government is manifestly lawful; but it by no means follows, that where no such consent can be traced, it is therefore the reverse; and that the people may take arms (which is what Locke means, or he means nothing,) to force their rulers into such

* Locke, *passim*.

measures as all may approve. The various modes of testifying consent are wholly conventional, and, in every nation, depend upon their own peculiar laws and customs. Long usage and peaceable acquiescence are indications surely as valid as an express polling of votes. This is all the foundation we have for our own common law, by which our most sacred and important civil institutions, and all our rights of property, are pointed out and secured. Are all these unlawful because we cannot trace the consent given to them by our ancestors by any formal act of recognition? Upon what other foot stood our Constitution itself, of King, Lords, and Commons? Where are we to find, where even to look for, the record of positive formal consent by the nation to be ruled by a king, with the advice and participation in power of a national council, call it Parliament, Witenagemot, or by whatever you please? If this cannot be shown, according to Locke, all crowned heads from Carac-tacus (and probably long before him) were usurpers. Alfred himself, and even Egbert, cannot escape, for there is no account of the *election* of either of them. Do we not therefore, of necessity, recur to the proposition of Blackstone, quoted in the body of this work,—Egbert's title cannot be demonstrated beyond a possession of 300 years; and we take it for granted that it was originally a good one on that account, *for we know no better*.

Now, were these tenets of Mr. Locke to hold for a moment, and all rights be exploded that could not

be derived from the positive consent of parties, what would become of the security of the world? We see how anxiously sensible of the dangers of such a doctrine are all our lawgivers, from their attention to what are called statutes of limitation. Were acquiescence never allowed to be available in proof of a right to property, what property could ever be safe? The perpetual changes in titles, and the overthrow of estates, would be so galling to all happiness or independence, that one of the objects (the greatest) of civil society, security, would fail. Hence it has been wisely ordered, that a given number of years of undisturbed possession shall bar all claims, however originally just. So favourably, and so properly disposed is the legislature to ground consent upon *acquiescence*; so much better is it for the peace of mankind, and therefore for the ends of justice itself, to submit to what may have been anciently and originally wrong, than, by perpetual commotion, and never-ending strifes, to render security a mockery, and law a mere ceremony.

It may be asked, if this hold good in public questions of the title to thrones, or particular forms of government, what period of time is to close upon claims, so as to make the acquiescence contended for amount to consent?

With that, if it even were not difficult to solve, we have nothing here to do. Our business is with the doctrine of Locke, who demands a positive formal proof of consent by a people to give the title of *law-*

ful to its government, whether the time of the acquiescence be long or short. Nay, not content with an ancient compact, however distinct, on the part of the people who are gone, he demands its perpetual renewal by those who are to come. For he lays it down broadly, clearly, and without modification, that consent itself can only bind those who give it, not those who are their successors; that a father, therefore, cannot bind a son, who is free to vacate for himself all that his father had done before him. Hence, he denies all allegiance from the circumstance of our birth-place; distinctly asserting, that it is not "any more hindrance to the freedom of mankind, that they are born under constituted and ancient polities, that have established laws and set forms of government, than if they were born in the woods, among the unconfined inhabitants that run loose in them. For those," he proceeds to say, "who would persuade us, that by being born under any government we are naturally subjects to it, and have no more title or pretence to the freedom of the state of nature, have *no other reason* (bating that of paternal power, which we have already answered,) to produce for it, but only because our fathers or progenitors *passed away their natural* liberty, and thereby bound up themselves and their posterity to a perpetual subjection to the government which they themselves submitted to." * This extraordinary independence of the laws of a country where we reside is carried to a strange

* p. 288.

height in another exemplification of the law of nature, which if correct, all jurists, and, indeed, all men, have been buried in wonderful error.

For having laid down that *every* man has a right to punish offenders against the laws of nature, and be their executioner (which may be abstractedly true), he asks, how else can any prince or state punish an alien for *any crime he commits in their country*? His language is remarkable. He says, their laws “reach not a stranger. They speak not to him; nor, if they did, is he bound to hearken to them. Those who make laws in England, France, or Holland, are to an Indian but like the rest of the world, — are men without authority; and therefore, if, by the law of nature, *every* man hath not a power to punish offences against it, I see not how the magistrates of any community can punish an alien of another country.” *

So then, according to this, an Indian coming here under the protection of our municipal laws, may offend every one of them with impunity! Was this great light to be told, that every man who comes into a country, though only a sojourner, is for the time bound by its laws? What are we to say to this, but that aliquando bonus dormitat; the rather, because, with strange inattention to his own positions, he, in another place, arguing for a *tacit* consent to the laws of a country, holds, that a man lodging in it for a week, or barely travelling on the highway, is as

* p. 194.

much obliged to obey the laws of its government as any one that lives under it. *

Locke proceeds to say, that a man cannot, by any compact whatsoever, bind his children or posterity; for a son, when a man, is altogether as free as his father, who can no more give away the liberty of his son than that of any other man.

Granting that this may be true, if by liberty we mean the opposite of slavery, (though there are not wanting advocates for the paternal power in this respect,) it is obvious that the liberty here mentioned as *given away* by the father is not what is meant by such mere freedom from slavery, but the power of throwing off allegiance to the government under which we live.

“Thus,” says our author, “it is plain by *the practice of governments* themselves, as well as by *the law of right reason*, that a child is born a subject of no country or government. He is under his father’s authority till he comes to the age of discretion, and then he is a free man, at liberty under what government he will put himself.”†

Where Mr. Locke found this dictum in the practice of governments, with the law of England staring him in the face, which enacts the direct reverse, it would be vain to inquire; equally vain, I think, to discover it *as a law of right reason*. It is, indeed, carrying the rights of nature to extremity with a vengeance; and the consequence would be, that no

* p. 291.

† p. 290.

country would ever be able to know its own citizens, no government its subjects, unless every individual man and woman who enjoys the protection of the laws should (as the men formerly did) take the oaths of allegiance to the sovereign of the state. But without that precaution, Locke thinks that the all-powerful and inalienable rights of nature would prevail against all old-fashioned and unjust notions of allegiance being founded upon birth, if the liege-man should change his mind, which *upon certain conditions* he holds he may do, and might withdraw his fealty whenever he pleased.

This argument, we are to observe, is adopted in answer to an objection, which, he says, is made to his theory of the necessity of consent in the people to render a government what he calls lawful; the objection being, that the people in any commonwealth having always been in subjection, either to their fathers or their sovereigns, never had this freedom. Hence his *necessary* proposition, that even when united together under a government, they were still always free to continue so or not.

But, as if sensible of the inconvenience of this impracticable theory, our philosopher has a salvo which is to bring every thing round again.

This is, that though the father cannot bind the son, yet he may annex such conditions to the enjoyment of the *estate* he may leave him as will bind him to consent, by swearing allegiance to the government that is to protect him in it. As long, there-

fore, as he enjoys the property he must be a faithful subject; but if he pleases, and when he pleases, he may withdraw from this duty and the country together, only by selling his property, and settling under any government he may like better, or seeking new habitations in *vacuis locis*.

We wonder Mr. Locke, in his zeal for the rights of a community, made even this concession, and allowed a man such a property in his own estate as to have the power of bequeathing it even to his child. For property, or at least the inheritance, or power of bequeathing it, is, as we know, the mere creature of municipal law, and varies as to its rules all over the world. It is not derived from the law of nature, and so all jurists tell us. Yet Locke, in another place, seems to deny to the father any right to annex conditions to his bequest of an estate to a son, or rather, he denies the necessity of making any bequest at all to enable the son to enjoy it. For when he comes to treat of *conquest*, he, with a want of precision that seems astonishing, denies the power of a conqueror over the possessions of any,—not even of the conquered nation,—who have not joined in opposing him; nor even of more than the *life interest* of those who did, because *by the law of nature*, after those life interests ceased, they passed to the children *as of right*. There is no such right under the law of nature; for succession, as we have said, is the creature of positive, not natural, law. The children, indeed, generally, but not always, *take*, but because

they are for the most part the next occupants, not because they are acknowledged heirs.*

But upon our immediate subject of *conditions* to a bequeathed estate, how if there is no estate to bequeath? This, I apprehend, must be the case with by much the greatest number of citizens of any nation existing. What estates in land or money have thousands of honest Englishmen, who yet never dream of renouncing their allegiance to the state which protects their persons, though they may have no property? If the meanest of them be harmed in their bodies or their liberty, by nobles or princes, or even the King himself, the law gives him the same redress as it would to one of the highest degree. Are they not, then, bound to own and obey the law; that is, the government which protects them? And are not protection and allegiance, in the language of all the most devoted radicals, always reciprocal?

This, however, Locke himself admits to an extent so strangely inconsistent that it overturns nearly his whole theory, in regard to the right of renouncing an allegiance to a government to which a consent has not been given.

He allows two sorts of consent; one in form, the other tacit. Between the consent in form and the tacit he makes a great distinction. The first, he says, binds for ever; and the man who gives it "can never be again in the liberty of a state of

* See Blackstone on Title by Occupancy.

nature." But the last being only the consequence of the possession of property, whether in lands or goods, or of inhabitancy, even though only for a time, it ceases, and may be withdrawn whenever, by sale or donation, the property is parted with; in which case the allegiance becomes merely local and transitory.*

Now, the first observation upon this is, obviously, that the whole hypothesis, as to the necessity of consent to constitute a lawful government, is, if not retracted, at least rendered nugatory; because we here see, that the mere circumstance of sojourning in a country, much more the possession of lands or goods within its pale, testifies an implied or tacit consent and promise of obedience to the government, quite sufficient during the possession to make it a duty to obey it, as if oaths to that effect had been actually taken. The whole doctrine, therefore, (granting all that is asked for the freedom enjoined by the law of nature,) is reduced to this,—that allegiance, or implied consent, does not, as according to our laws it does, depend upon birth: an axiom which in the closet, perhaps, though not in our law courts, might be granted without much damage to the cause of justice.

On the other hand is to be considered how totally it alters the whole nature of patriotism, and extinguishes the love of country, by reducing our local preferences to mere self-interest, without one spark

* p. 292, 293, 294.

of that generous flame which has kindled so many great and noble actions, and excited all the charities of kindred, so as to exalt us into superior beings. Warmed by such feelings, how may not a few acres of rough uncultivated soil, a sea-beat promontory, a barren rock, be made to appear a heaven upon earth, the abode of wisdom, and the nursery of heroes ! It was this that kept up the courage of Ulysses through twenty years of persevering struggle, in order to revisit his beloved Ithaca. It is this which supports the rugged Highlander through the long exile of numerous campaigns, fully rewarded by the mere hope of once again *setting his foot upon the heather* ; and it is this that, while it increases, cheers the exertions of the Swiss to regain his native mountains, although the thought of them melts him into tears if he but hear the air that charmed his youth, when it called home the wandering herds of his village to their nightly shelter.

All these are really the inalienable rights of nature ; yet all these would Locke extinguish, by setting up a theory which, for the sake of making men, as he thinks, more independent, destroys their love of their native soil ; and, by converting them into citizens of the world, under the notion that the world, by this natural equality, is before them where to choose, deprives them of every impetus to action but that of sordid self-interest.

This endeavour to erect our knowledge of liberty into a regular science, to create a scheme of princi-

ples, and demonstrate what we think neither requires, nor ever receives, demonstration à priori, (the right of self-defence against a violator of law, whom we cannot otherwise resist,) is, in our opinion, the first and fundamental error in the book of this great man. There are other what to us appear errors also, which we shall now proceed to consider.

One of them may be classed under the same head as the last we have noticed, namely, the deduction of what, every one will agree, is convenient, is wise, and obviously proper, (but which he is not content to take under that recommendation,) from a positive *law of nature*; — I mean the governing by standing known laws, not extemporary decrees, which last is despotism.* Every body must feel that despotism, according to our general experience of human nature, is, for the most part, a very bad thing. I say, for the most part, because it is not invariably so. Were Trajan or Alfred always to reign, or were Socrates a king, we might question whether the “*salus populi*,” — that loose, vague, and unprecise phrase, which has often been the father of so much injustice, so many errors, so many murders, and which is the favourite authority for most of Locke’s theories, — would not be better consulted than by the myriads of standing laws made and administered for our protection by demagogues.

Be it, however, that known laws are better than arbitrary power, which no one will dispute. Why not

* The rules.

be content with the reason of the thing? Why make it necessary to fortify that principle, by making it an absolute law of our nature, which it is not, any more than to drink *wine*, or eat *animal* food, which most of us find conducive to health, or at least is agreeable to the palate. This we are certainly not *bound* to do.

Most persons think despotism is a bad form of government, (I am sure I do;) but there are others who have thought differently, — witness the Danes, the Spaniards, and the Portuguese. If consent, or, in other words, choice, is to decide all, why may it not be competent for these people to *choose* to live under a despot, who, they think, will administer their affairs better than a tumultuous assembly, though composed of themselves?

It was the apothegm of Rousseau, that if men were angels, about to choose a government, they would decide for a republic. Others, with better reason, think, that *if* men were angels, they would choose autocracy, the autocrat being God.

This liberty of choice, however, does not please Locke, who lays it down as nothing short of the *natural law*, that nothing arbitrary should or can be permitted in a government. Hence, he says, “the obligations of the law of nature cease not in society, but only in many cases are drawn closer. Thus it stands as an *eternal* rule to legislators, as well as others. The rules they make must be conformable to the will of God, of which the law of nature is the

declaration, and the fundamental law of nature being the *preservation of mankind*, no human sanction can be valid against it.”*

What may, or may not, be for the preservation of mankind, may be made a question which Moses, Lycurgus, Appius Claudius, and the tribunes of the people at Rome, might disagree about: *quot homines tot sententiæ*. But we are willing to take these maxims as truisms. Still the question will be as to the practices founded upon them, upon which (from the various, differing, and sometimes contradictory notions of what is, or is not, prescribed by the natural law,) we are left as much at sea as ever. It is remarkable that Locke himself, in a very few lines after, has this language: — “For the law of nature being unwritten, and so nowhere to be found but in *the minds of men*, they who, through passion or interest, shall miscite or misapply it, cannot so easily be convinced of their mistake, where there is no *established judge*.”†

This also is true; but the remedy proposed, and its asserted foundation, which, he says, is in the law of nature itself, may and does admit of much question.

For he holds, that, on account of this uncertainty, “the legislative or supreme authority *cannot* assume to itself a power to rule by extemporary arbitrary decrees, but is *bound* to dispense justice and decide the

* p. 305.

† p. 306.

rights of the subject by *promulgated standing laws and authorized judges.*" *

That this is wise and advantageous to the community, is clear; but how we are bound to do it by the law of nature, conveying the will of God, remains still to be proved. Even the conclusion in its favour, which forms its basis, is not clear, much less irresistible. For who is to say, with certainty, that these *promulgated standing laws*, merely because they *are promulgated*, are in conformity with,—that they may not even be opposed to,—the law of nature? It is at least certain, that the predicates of *promulgation* and *permanency* do not necessarily denote, much less prove, such conformity. It was a *promulgated and standing law* of some ancient people, that strangers were to be considered as enemies; and so we translate βαρβαροι or barbarous, at this day, although its real meaning was only strangers. The droit d'aubain (jus alibi natûs) in France was *promulgated and standing*; yet what more contrary to natural equity, — that is, the will of God? Again, who is to answer for judges, merely because they are *authorized*? The judges of Israel were authorized, yet they had the power of kings. Samuel was arbitrary enough, who represented and spoke the will of God himself. Kings originally, for the most part, were *authorized judges*, yet they pronounced what decrees to them seemed best. All depended upon their personal virtue, or

* p. 307.

personal wickedness. Jeffries was an authorized judge.

We see, then, into what difficulties and inconsistencies the wisest may be betrayed, when they desert practical wisdom for theory, especially if the theory be to support a favourite doctrine. The whole of this system of Locke is merely to beat down the lawfulness of any thing like arbitrary power, (the object of his and every body's just hatred,) even although it may be the lawful constitution of a state, and that even authorized by his favourite requisite — *consent*. But for this purpose, finding this in the way, he will not allow consent in these cases to have its fair influence, and therefore sets up the law of nature against it, which, being the mode (how loosely he cares not) of declaring the will of God, "no human sanction," he says, "can be valid against it."

The phrase of the LAW OF NATURE has a deserved popularity attending it; but it also has this defect, that, being, as Locke himself allows, "unwritten, and only to be found in the minds of men," each individual mind is the judge of it. We have seen how Locke himself judges of it in regard to arbitrary decrees: but this seems less wild than his notion of the rights of conquest, and the right to property in the children of the conquered.

In the first place, he makes a distinction between conquest in a just and an unjust war: as usual, very proper in the abstract; very uncertain in the application. For who is to judge of the justice or injustice

of a war? Mr. Locke will say, himself. If so, any man; and if any man, the party supposed by him to be in the wrong. The appeal, therefore, is to the fortune of arms, which, except according to the old notion of the *specific express* interference of Providence upon an appeal to him, now justly exploded, is no appeal at all.

Well, however, fortune favours the wrongdoer, and the injured party is conquered, submits, and, to escape death or slavery, — which, Mr. Locke, with other jurists, allows it is the right of the conqueror to inflict, — agrees to terms, upon which his life and liberty are spared. Mr. Locke says that the cause being originally unjust, he may break those terms whenever he can, because they were imposed upon him by force, and against his will; and if he cannot, his children, or their children, to the farthest generation, may.

The consequence of this would be, that no conqueror, be his cause just or unjust, would ever consent to grant terms; and universal massacre, or eternal slavery, would, as it once almost did, become the law of the nations of the world.*

How dreadful this would be need not be asked, and all this is owing to the radical fault of popular jurists, like this gifted person, in always pushing abstract notions to extremity in practice. Grant

* As well might a breach of parol, after life had been spared in battle, be excused by a reference to *the opinion* of him who is spared on the cause of the war.

that a wrong cause cannot be made right by conquest; grant, even, that the terms accepted were *imposed* by the conqueror, and not sought for by the conquered (which is by no means clear); having accepted and *profited* by, is he not bound to fulfil, them? As to its being in a wrong cause, from the want of a common judge, it being impossible to decide, all jurists agree, that when the contest is begun, each party, as far as the laws of war are, if we may so say, *technically* concerned, are to suppose themselves and act as if they were in the right, and all neutrals are bound to conduct themselves on the same supposition.

However this may be, our philosopher holds that the original justice of the cause of the vanquished (about which he allows, as we see, no doubt,) can never be waved, but prevails to eternity to be asserted by posterity, whenever opportunity offers. "Who doubts," says he, "but the Grecian Christians, descendants of the ancient possessors of that country, may justly cast off the Turkish yoke, which they have so long groaned under, *whenever they have an opportunity to do it?*" *

That they, or anybody, may or would cast off a yoke too galling to bear, ought not to surprise us; but that they would have a right to do this, contrary to a convention made 500 years ago, by which their fathers' lives were spared, by which, and only by which, they themselves are now in existence, and to

* p. 354.

which they and their ancestors during all that time had submitted,—and that they may do this of right, because they *now* discover that the original cause of their conquerors was unjust,—is, according to our principles, wild, unsound, and dangerous doctrine. If Locke were asked to prove the title of these Grecians themselves, whose descendants had been conquered by the Turks, what could he reply?

But the cause of this theory is evident. As mankind, according to him, were by the law of nature born, under whatever circumstances, free and equal, so they always remain so under that law; and all alterations in their state being palpable encroachments of power in an unjust cause, they may be for ever opposed,—by arms, if necessary,—until the freedom and equality are recovered, no matter what sanctions they or their fathers may have given to a new settlement; such sanctions, says the philosopher, being contrary to the law of nature, that is, (where it can be understood,) to the will of God.

Strange and wild as all this generality of doctrine appears, it is harmless in comparison with what follows in the practical details. For, first, even where the conquest is in a *lawful*, much more in an unlawful war, he makes a distinction (as novel, we apprehend, as it is surprising,) between those of the offending state (though all belong to and are incorporated with it,) who actually “concur, assist, and consent to oppose” the conqueror in the war, and those who do not.

His reason for this contravention of all our notions upon the subject is, as usual, drawn from the law of nature; and, as usual, without adverting to the fact, that, the interpretation of it in particular cases being left to every individual, what may or may not be thought lawful or just, as far as it is to influence a particular conduct, cannot be satisfactorily determined between the parties concerned. "The people," he says, "having given to their governors no power to do an unjust thing, (*for they never had such a power in themselves,*) they ought not to be charged with the injustice of an unjust war, any farther *than they actually abet it.*"

Now, in the opinion of all jurists, where there is no common judge, (as there is none between nations,) each state interpreting the laws of justice as they think right, that is, in their own favour, both are to be deemed in the right so far as the laws and consequences of the war are concerned.

But even this is not necessary to show the error of the strange paradox, that men who have united themselves to stand or fall in a given society, and have a community of interests, and therefore of conduct, (being in these respects one and indivisible,)—men, who, if the event of the war had been favourable, would have profited in common with those who actually fought,—do, nevertheless, if the event is adverse, *preserve their individual capacity*, as if they were still personally free, and had never so united themselves. Nay, he goes farther than this; and

though he allows the conqueror a right over the lives and persons of those who oppose him, that is, though he may kill or reduce them to slavery, he has no right over their property. Can this hold for a moment? Is it common sense, much more common justice? If it is, what errors have all belligerents been in, particularly the English, when they have made prize of *innocent* merchants, who never joined their own country, it seems, in the wars against them! How have all our courts of admiralty disgraced themselves by their infamous judgments of confiscation!

And upon what is this confounding of all relations of rights and duties founded? Again, upon the law of nature, — from its vagueness, a most convenient anvil upon which to hammer out any theory we please to entertain on political philosophy.

Locke allows a conqueror, indeed, so far a right to make free with the possessions of the conquered as to indemnify himself for the expenses to which the aggressor has put him. But even this with some hesitation. “*Perhaps,*” he says, “he may have *some* right to them (the goods), to repair the damages he has sustained by the war, and the defence of his own right;” and this he illustrates with this admirable sophistry, “that because I may kill a robber who sets upon me in the highway, I have no right to take his money, which would make me a robber too.”

When I read these passages fifty years ago, I shut the book, and asked if this could be the reasoning of

Locke? That even in war we are not to do *unnecessary* mischief, is one of the most sacred duties of the Christian law of nations; but, not to advert to the immensity of the damages which the conqueror may have sustained, particularly in a long war, is he not, as a matter of justice, entitled to deprive his enemy, though he has spared his life, of *all* means of renewing his aggression, and therefore to take possession of his country, much more of his goods and wealth, should that be necessary for his security? In addition to this, may not the possession of the country wrongfully detained from him be the very cause of the war?

The last French war lasted nearly twenty years, and cost our country many hundred millions; the indemnification of which alone would have exhausted all the wealth we ever took, or ever could have taken, from France.

In the first war waged by Frederick II. of Prussia against Austria, Silesia was the very bone of contention. The King being successful, was he not to retain the object for which he was driven to arms?

What has Locke to oppose to this? Certain visions concerning rights in a state of nature, which we will now consider.

“Let the conqueror,” says he, “have as much justice on his side as could be supposed, he has no right to seize more than the vanquished could forfeit. His life is at the victor’s mercy; and his service and goods he may appropriate, to make himself

reparation; but he cannot take the goods of his wife and children; *they*, too, had a title to the goods he enjoyed, and their shares in the estate he possessed. For example; I, in the state of nature, (and all commonwealths are in the state of nature, one with another,) have injured another man, and refusing to give satisfaction, it comes to a state of war. I am conquered, and my life is at mercy, but not my wife's and children's. *They made not war*, nor assisted in it. I could not forfeit *their* lives; they were not mine to forfeit. My wife had a share in my estate; that neither could I forfeit. And my children also, *being born of me*, had a *right* to be maintained out of my labour and substance. Here, then, is the case. The conqueror has a right to damages, and the children to their father's estate for their subsistence; for as to the wife's share, whether her own labour or compact gave her a title to it, it is plain her husband could not forfeit what was *her's*. What must be done? I answer, *the fundamental law of nature* being, that *all* (mankind), as much as may be, should be preserved, it follows, that if there be not enough *fully* to *satisfy* both, viz. for the conqueror's losses and children's maintenance, he that *hath and to spare* must remit something of his full satisfaction, and give way to the pressing and preferable title of those who are in danger of perishing without it." *

Now, upon this exuberant power attributed to natural law, we have only to remark, that it assumes,

* p. 349,

as a right of nature in its wildest state, what, we have said, is the creature only of a state of society. Such is the law regulating property, which is altogether conventional, and might, or might not, assign to the wife and children what is here supposed to be theirs by a fundamental law, before any laws were known.

As to the axiom, that he that hath and to spare must give way to the preferable title of those who are in danger of perishing, the first remark that occurs is, that the conqueror himself may be the person in danger of perishing. But admitting the axiom as a moral duty, the case must be first established, that either party would actually be in this danger, before we are called upon to decide; for, whatever humanity might determine, the extreme of necessity alone could establish the demand as an absolute right. At the same time it is to be observed, that the case demands, as a right of nature, that these persons who, we say, have no rights but those of convention, should be even *fully satisfied*, before the conqueror's claim should be heard. According to this dogma, therefore, by the fundamental law of nature a man, not merely who has been at war, but any beggar who has nothing, is not merely to be relieved, but *fully satisfied*, out of the estate of him who is rich, whenever it shall please the needy man to apply for it.

The question as to property, however, is of far less consequence than the inroad he would make in, perhaps, the most universally received axiom in all

the laws of nations, and one which this very treatise, in other parts, mainly supports,—that all the subjects of a state, be they ever so numerous, have towards other states but *one* individual character. Without this, even among themselves, what becomes of the favourite, and, we allow, indispensable maxim, that a majority binds the minority, even though only of one? How would our own revolution have been carried? How would King William's title (the only lawful one in Christendom according to Locke) have been established, but for this inseparableness of character among the individuals forming a nation? The question for a king against a regency, that is, for William to the exclusion of James, in the House of Lords *of the convention*, was carried but by *two* voices. Were, then, the fifty-nine who voted for it to be considered as Englishmen, and the forty-nine against it to be citizens of the world? In the American and last French wars, Mr. Fox and his party voted invariably against the measures of the majority. Was this majority, alone, the nation, and Mr. Fox no part of it?

It would be the same as to the proportion of the people who sided with one or other of the state parties in 1689. Were the Jacobites, after the Revolution, ever spared by William under the plea that they were independent *individuals*, separated from the state? Yet his champion, Locke, holds distinctly, that a conqueror, even in a just cause, “over those *who opposed him not*, and the *posterity* of those who

did, hath *no right of dominion*; they are free from any subjection to him; and if their *former government be dissolved*, they are at liberty to begin and erect another for themselves." * According to these subtleties, several millions of the inhabitants of the British isles, who did not oppose William or the revolutionists in 1689, but who neither approved of him nor the revolution, had a right, *their old government* being dissolved, to begin and erect another for themselves. In other words, the state ought to have been separated into two communities.

But, again, should it be said those Jacobites consented, Locke has an admirable resource. For, first, he says, then, his doctrine of the necessity of consent to make a government lawful is proved. Next, that the consent was forced, and therefore, by the law of nature, not binding. † These consequences of his doctrines, affecting his favourite event, for which they were expressly written, he certainly did not intend. But, even without such consequences, they seem (*mirabile dictu!* in such a man) to be absolute puerilities.

In the same spirit of generalizing without reference to given cases, (always so dangerous,) and of applying the ready instrument of the law of nature to cases which may be exceptions to its rules, he

* p. 351.

† "The government of a conqueror, imposed by force on the subdued, against whom he had no right of war, or who *joined not in the war against him* WHERE HE HAD A RIGHT, has no obligation upon them." p. 352, 353.

says, that "granting that all members of a body politic are to be considered as one, and so to have forfeited their lives, this will not affect their children. For a man has no power over the life of his child, and therefore no act of his can forfeit it. So that the children, whatever may have happened to the fathers, are freemen; and the absolute power of the conqueror reaches no farther than the persons of those he subdued, and dies with them. And though he may make them slaves, he has no such right of dominion over the children." *

This may be abstractedly true, but practically contradicted a thousand times over. Many reasons may occur under the same law of nature,—which, he justly says, is only the law of reason, which every man must interpret for himself,—wherein such a man may think it right to imitate the Deity, who visits the sins of the fathers upon the children. How many children have not been destroyed and cut off from the land of their fathers, on account of their fathers' wickedness, by the express command of the Almighty; not by way of punishing the fathers, who could not feel it, but because it was reasonable to suppose the children had been, or would be, bred to the same crimes, and would so breed their own progeny. Of this we need not, as examples, point at the Deluge, the fate of Sodom, the extirpation of the Canaanites, and the dispersion of the Jews to this day. Yet the law of nature, if, like no other law, it is to have no

* p. 353.

exceptions, no latitude of interpretation, would, in this part of it, be inconsistent with another part, quite as pressing, and still more important, — the right of self-defence. Did we seek in our own law a justification for this, (the authority for which, however, as it contributes to the power of kings, Locke would probably deny,) how otherwise can the law of forfeiture for treason by the father be justified towards the son? How does Locke himself reconcile this doctrine with his darling measure,—the election of William to be our king, to the disinherison of Anne, the child of James; or with the preference of our present house to that of Savoy?

In a neighbouring country we lately saw a monarch and his whole family dethroned and exiled for an atrocious invasion of the law. But though the fate of Charles X. might have been just, how, upon Mr. Locke's principles, could the exclusion of the Duke of Bordeaux be justified? He was a youth, in a state of pupillage, and could not possibly have shared in the crime which ruined his family.

But, above all, in a similar case, can we forget the argument of all the Whig lawyers and statesmen, when reminded of the son of James, — that, even if he was not supposititious, as he would probably be bred to popery and arbitrary power, it was better to pass him by, and elect a dynasty totally new. They had “scotched the snake, not killed it,” while Fleance lived.

These considerations alone, one would have thought, would have repressed these startling doctrines, which, from over-fondness for theory, this great reasoner has hazarded.

But nearly the whole of his notions of the law of nature, in regard to property, and succession of property, may be contested. That nature tells us to take care of our children, is true; and he that would let them want, is worse than the brutes. But that she obliges us to endow them with more than we think necessary for their sustenance, or deprives us of our discretion in distributing our fortunes, I am yet to learn. A son may be an idiot, a profligate, a traitor, a brute. Is he, notwithstanding, to set his father at defiance, and force his way, as of right, into his possessions after his decease? By no part of the law of nature, therefore, that I know of, has the son a right to inherit the fortune of his father. In some countries, especially in the east, (despotic, if you will,) the emperor is the heir of all his subjects; in some, the eldest son succeeds; in some, the youngest; in some, all. When there is a will, however, though made from caprice, or in a fit of spleen, or revenge, the heir-at-law (I will not say forfeits, but) has no right to the estate. And thus the whole reasoning of this great reasoner upon all other subjects, as far as it founds the rights of a child against the conqueror of his father upon the natural law, is based upon premises egregiously false.

The notion, that only those who are found in arms, or who are ready to assist those who are against a conqueror in a just war, are punishable, and that those of the same nation can be considered as if they were not of the same nation, if they did not arm or assist, is equally fallacious. Every citizen of a state arms in its defence, or is bound, and must be ready, to do so, whether the cause be right or wrong, or else he is a traitor. What should we say to the soldier who deserted his post, or left the field where his countrymen were engaged, because he did not approve the cause that brought him there? What army could act, or what nation be safe, where this division of its members could be tolerated. Every man must act, or be ready to act, as the state orders him, or renounce the privileges belonging to that state.

Mr. Locke, however, appeals to Scripture in support of one of his most startling positions, — namely, that no promises of fidelity, no treaties, no length of subjection, no indulgences, no incorporation with the conquering state, can oblige the vanquished nation, if the war was without just cause, not to violate every tie they may have submitted to, and redeem what they have thus so solemnly surrendered, at any distance of time. Nor, even if the war had been just on the part of the conqueror, can the posterity of the wrong-doers, according to him, be bound by any treaties or submission of their fathers.

This we have already canvassed, but not a Scrip-

tural authority, on which he, in part, founds this unheard-of doctrine.

The precedent, if precedent it can be called, is that of Hezekiah, King of Jerusalem; but how it supports the doctrine in aid of which it is cited, it baffles the understanding to comprehend.

It is founded on a single, the seventh, verse of the eighteenth chapter of the second book of Kings, “And the Lord was with Hezekiah, and he prospered. Wherefore he went forth, and he *rebelled* against the King of Assyria, and served him not.”

To rebel, is with many a very wide, and sometimes a very popular phrase; but with nothing but this naked verse before us, I imagine it would be difficult for any one, the most ingenious, to gather more, than that the Lord favoured Hezekiah in a contest with the King of Assyria, brought on *by his not serving him*; whatever that means, for whether bound in justice to do so or not, does not appear.

Mr. Locke’s comment upon it, however, is this:—

“*Whence it is plain, that shaking off a power, which force, and not right, hath set over any one, though it hath the name of rebellion, yet is no offence before God, but is that which he allows and countenances, though even promises and covenants, when obtained by force, have intervened; for it is very probable, to any one that reads the story of Ahaz and Hezekiah attentively, that the Assyrians subdued Ahaz, and deposed him, and made Hezekiah king in his father’s*

lifetime; and that Hezekiah by agreement had done him homage, and paid him tribute all this time.” *

Now, in this comment, it is evidently assumed by Locke, that *force*, and not *right*, had created the power of the Assyrian over Hezekiah, for not one word is said, before or after, of the manner in which it arose. For, waiving for a moment the conclusion drawn from these suppositions, (for mere suppositions, and those very far fetched, they are,) I *have* looked attentively at the story of Ahaz and Hezekiah, and I cannot find a vestige of the probability asserted, either as to conditions imposed upon them by power and not right, nor that the Assyrians deposed Ahaz, and made Hezekiah king in his father's lifetime. On the contrary, being pressed by the King of Syria, he sent to the King of Assyria, saying, “I am thy servant and thy son, come up and save me out of the hand of the King of Syria.” This may probably denote, that he was bound by some obligation to the Assyrian, but by no means that it was through an unjust force.

The account goes on to say, “And the King of Assyria hearkened unto him.”

He did so by laying siege to Damascus, where Ahaz joined him, and committed great idolatries; but not a word is said of dethroning him, and making Hezekiah king during his lifetime. On the contrary, the concluding verse of the chapter says, “And Ahaz slept with his fathers, and Hezekiah,

* p. 358.

his son, reigned in his stead ;”—an extraordinary way of relating that a son mounted his father’s throne during that father’s life.*

The account in the Chronicles varies a little, and but a little,—certainly not in essentials,—from this. The King of Assyria is there made to *distress* Ahaz, but did not strengthen him. He distressed him, by inducing him to make him great presents; yet he so far relieved him, as to take Damascus. But no word is said of dethroning him; and though he was not buried in the sepulchres of the kings, yet no reason is assigned for it, unless his abominable idolatries may be supposed one. Certainly his being dethroned is not a reason mentioned; and the chapter concludes in the same manner as in Kings, — “He slept with his fathers, and his son reigned in his stead.” †

This being as stated, (and I have taken pains not to mis-state it,) I am really at a loss to discover the reasons for Mr. Locke’s “very probable” supposition as to the dethronement of Ahaz; the making his son king during his life; the agreement to do homage and pay tribute to the Assyrian; in short, the power imposed upon Hezekiah by *force*, not right; and the *consequent* favour of Heaven to his enterprize, in shaking off that power. For the sake of Mr. Locke’s accuracy, and from the veneration due to his name, it is probable that I am myself mistaken; but so it is.

But even should Mr. Locke be right in this extra-

* 2 Kings, 15.

† 2 Chron. 28.

ordinary, and, as at present we are bound to think, groundless comment, will it serve his purpose, or prove his point, that God, as a general proposition, approves and favours the breach of the most solemn treaties and covenants of fidelity made for a valuable consideration, viz. the sparing of life, perhaps of property, because the original cause of war may have been unjust on the conqueror's part? Still more, will it prove that these violations of covenants may, by the sanction of Heaven, be effected at any distance of time, and by the most far off descendants of the party originally aggrieved?

The instance quoted, at least, does not bear out this last supposition; for Hezekiah, whom God favoured, was himself the party injured. He did not rebel to avenge his ancestors. So far, therefore, the authority palpably fails. Yet, after all, supposing the fact as the extraordinary and exaggerated commentary states it, will it amount to that approbation of the Almighty which is asserted?

The ease with which texts of Scripture may be tortured into almost any meaning and any precedent, is proverbial, and never more obvious than in the comment before us. In the deep scheme of Providence, by which all the actions of men are governed without trenching upon their free will, who is to say what is really to influence the Almighty in the vast scheme of his government; or what, upon the whole, to him appears right or wrong? If success in wickedness be a proof, how often does he seem to favour

wickedness? His being *with* Hezekiah in this revolt, does not *necessarily* show more than that he chose it should succeed; for what after purpose, who can tell? *Possibly*, may another commentator say, to punish the Assyrian for having broken many treaties through the means of a treaty-breaker. Thus, mere retribution. If favouring, or being *with*, a person, mean, that his moral conduct is approved, and Locke's supposition is right, that Hezekiah had been injured, the moral conduct of the Assyrian, when he did the injury, was equally approved, for he was equally successful, and God, therefore, was equally *with* HIM. If so, God approved and countenanced the tyranny, oppression, and injustice practised on Hezekiah, as well as his revolt against them. Nay, he did so in an infinitely greater degree; for as no wickedness, through the most infamous cruelty, idolatry, and debauchery of every kind, was ever greater than that of the kings of Assyria, so no empire was more successful or extended throughout the world. Can we forget the exclamation in Isaiah, beautiful as forcible, "O! Assyrian! *rod of mine anger.*" Or the burst of Milton,

"The supreme good, t'whom all things evil,

"Are but the slavish officers of vengeance."

Here, then, as there is no proof to the contrary, Hezekiah might with equal probability be called this slavish officer, as well as a defender of right against oppression.

There is another citation of Locke from Scripture, which ought to have shown him (I speak it with

reverence,) the inconvenience (to say no more) of relying upon particular texts or narratives, in support of doctrines as to what, abstractedly, God does or does not approve, and the danger of inferring approbation from success. If ever there was, to our apprehensions, an unjust seizure of a country, it was when the Israelites, in their march through the wilderness, destroyed the Amorites, and took possession of their land. For what? Because Sihon, their king, refused them passage (we think prudently, for they were hundreds of thousands strong). Grant that they might have forced their way, they could do no more. But they seized the whole land and kept it. Years afterwards the descendants of these Amorites, now the children of Ammon, took arms to recover it. But Jephtha the judge of Israel said no, for it was God's doing, who gave us the victory. They fought, and Jephtha conquered and kept the land. What does Mr. Locke say to God's approbation of revolt *after any length of submission*? But who does not know the difficulty (I do not say the impossibility,) of reconciling the prosperity of evil-doers with the moral government of Providence? How long ago was the sentiment uttered, "*Crimen deorum. Sylla tam felix!*" To reason about it would be vain; we have nothing to do but to wonder, reverence, and submit. Mr. Locke, as it seems to us, had better have left his appeal to Scripture alone.

We turn with more satisfaction to his account of *tyranny*, which is no more than justly described as

the usurpation of power, whether in the executive or legislative, either not warranted by or against law. In this light he is no more than correct when he says that wherever law ends tyranny begins.

Two particulars, however, are here remarkable from so great a champion of the rights of a people over delinquent sovereigns. First, that the persons of sovereigns cannot be otherwise than *sacred*, unless they themselves descend to personal violence, which can only be resisted by force. Upon this sacredness, he allows, must depend much of the security of the laws.

Next, what in the body of this work we have laboured to prove, that the legislative, by usurping authority not intrusted to them, can break their trust, and, therefore, forfeit it, as well as the executive, or a king. And this they do when they misuse their power, or assume one over the lives and properties of the community, who only made them delegates for their own general benefit and preservation, not their destruction.

Yet this position is laid down in all that abstract generality always so dangerous from its liability to be misapplied. For the question here, as with a monarch, perpetually occurs,—what is general benefit, what preservation? Of these there may be such different judgments, that what one man may think preservation another may deem destruction. Those who supported the late French war thought it would preserve the nation; those who opposed, thought it would destroy it.

Locke, indeed, in some measure, attempts to qualify his proposition, by saying, that "he who appeals to Heaven, must be *sure* he has right on his side." *

Another fallacy: for being the party, as well as judge, how *can* he be sure?

He adds: "It must, too, be a right that is worth the trouble and cost of the appeal." Again, "who that goes to war can ever calculate this?"

There is a still farther condition: for this is to be, as "he will answer at a tribunal that cannot be deceived, and will be sure to *retribute* to every one according to the mischiefs he hath created to his fellow-subjects; that is, to all mankind. From *whence it is plain*, that he that conquers in an unjust war, can thereby have no title to the subjection and obedience of the conquered." †

This *plainness* we do not perceive; for the consequence does not flow from the premise. God does not always, nor nearly always retribute the mischiefs done. Witness Poland and a thousand other instances. A conqueror too in an unjust war may not have a title to the obedience of the conquered; but it does not follow, that because a man, with a just cause of war, chooses to make it, even though it may not be worth the trouble and cost of the appeal, (of which *he* is the best judge,) he has, therefore, no right to the obedience of those unjust persons whom he has conquered.

All this deficiency in satisfactory result is the

* p. 342.

† Ib.

mere consequence we have adverted to, of bending practical cases to theories in favour of liberty, to which they do not belong.

Thus, though Locke allows that the legislative may betray their trust and usurp, (that is, become tyrants,) as well as a single sovereign; yet (preserving the bias of his mind,) he has the salvo, that it cannot be so often attempted, from the want of means; which may be true. But while the delinquencies of James are broadly designated in his general theorems, the thirty tyrants of Athens and the decemvirs at Rome are the only examples he adduces of tyranny in the many. He wholly passes by the infamous judgments upon illustrious patriots which so often disgraced the ancient popular assemblies, Socrates, Phocion, and others; and, as for the Long Parliament and the Popish Plot, which teem with usurpation, they seem never to have occurred to his contemplation.

We approach to a conclusion, but cannot take our leave of this important and interesting work, (interesting, from what appears to us its very defects, on account of the deserved celebrity of the writer for integrity and patriotism, as well as intellect,)—we cannot take leave of it, without adverting once more to its radical fault. Such must ever be the attempt to reason upon facts or propositions as proved to come under certain truisms or general principles, although there may be endless differences of opinion as to the proofs of their doing so.

This possibly cannot be better illustrated than by

the perpetual allusions in the work to the injunctions of the law of nature and the will of God.

No doubt of the forcible truth, that when we discover them,—which Locke properly holds can only be done through our reason,—we are bound to obey them. But, alas ! what is the reason of man ? Ever varying, ever inquiring ; never resting, never satisfied ; different in different men ; often so in the same man ; and although its nature and attributes may be unchangeable, its conclusions liable to perpetual, and even momentary changes, as passion or the senses present the same things under different appearances.

Hence, though all must be eager to obey the law of nature, and adore the will of Heaven, what two men can be certain of the agreement of their opinions concerning them ? We have seen, in the use he makes of the passages in Scripture respecting Hezekiah and Jephtha, into what a contradiction of practical deductions Locke himself fell. And if he failed, who can succeed ?

This radical fault alone causes him to embrace another opinion, which, however favoured by the besotted and puffed-up vanities of the self-called godly and elect among the Puritans and Covenanters of older times, one would have thought it would be impossible for such an unshackled thinker as Locke to have entertained. I mean, that an appeal to arms, whether in foreign or civil war, is an appeal to Heaven. I mean, not a submission to the general

providence of God over the events of the world, with a view to general and final consequences, but to his *immediate* determination on the question immediately passing, and judging it as a human judge would decide a cause before him. In this view, it is neither more nor less than the old exploded trial by battle; but were the question of the efficacy or justice of that trial brought before Locke, little doubt can be entertained of his decision. Still he maintains it in the course of discussing, perhaps, the two most important and critical questions of his work, prerogative and conquest; and he risks consequences in this reasoning which are surprising.

Cromwell, that great man, and greatest of hypocrites, in order to encourage his fanatic soldiers, used to say of the enemy—"The Lord has delivered him into our hands." So did his antagonists, the Scotch Covenantors; but Cromwell generally succeeded. He might therefore believe himself (certainly made many of his followers believe,) that their appeal to arms was an appeal to Heaven. Had he failed would the same belief have prevailed? Is it not astonishing that such a man as Locke should give into such a puerile fallacy?

But that we may not be supposed to be giving an opinion only, let us see how he actually trusts this tenet in applying it to the above subjects of prerogative and conquest.

"Prerogative," he says, "was given to be used for the good of the people, not to harm them."

Agreed. "But it is often used to their detriment!" That cannot be denied, any more than that one party may think it is detrimentally used, while another may think the contrary. If, then, there is no judge, except the parties themselves, how is it to be decided? Locke says, in the same manner as a dispute between independent states,—an appeal to Heaven, that is, to arms; and he again instances Jephtha against the Ammonites, where Heaven determined for him.

As the sum and scope of Locke's whole treatise is contained in his argument upon this point, we will give it at length, in order that every man may judge of it for himself.

"The old question," says he, "will be asked in this matter of *prerogative*.—But *who shall be judge* when this power (*prerogative*) is made a right use of?"

"I answer, between an executive power in being, with such a prerogative, and a legislative that depends upon his will for their convening, *there can be no judge on earth*, as there can be none between the legislative and the people, should, either the executive, or the *legislative*, when they have got the power in their hands, design, or go about to enslave or destroy them.

"The people have no other remedy in this, as in all other cases where they have no judge on earth, but to *appeal to Heaven*: for the rulers, in such attempts, exercising a power the people never put into their

hands, (who can never be supposed to consent that any body should rule over them for their harm) do that which they have not a right to do. And where the body of the people, or any single man, is deprived of their right, or is under the exercise of a power without right, and have no appeal on earth, then they have a liberty to appeal to Heaven, whenever they judge the cause of sufficient moment.

“ And therefore, though the *people cannot be judges*, so as to have, *by the constitution of that society*, any superior power to determine and give effective sentence in the case, *yet they have, by a law antecedent and paramount to all positive laws of men*, RESERVED that ultimate determination to themselves which belongs to all mankind, where there lies no appeal on earth; that is, to judge, whether they have just cause to make their appeal to Heaven.

“ And this judgment they cannot part with, *it being out of a man's power so to submit himself to another as to give him a liberty to destroy him; God and nature never allowing a man so to abandon himself as to neglect his own preservation: and since he cannot take away his own life, neither can he give another power to take it.* Nor let any one think, this lays a perpetual foundation for disorder: for this operates not till the inconveniency is so great *that the majority* feel it, and are weary of it, and find a necessity to have it amended.”*

Now, upon this remarkable creed we have first to observe, that the tyranny to be resisted is not con-

* p. 334.

fined to a king, or the executive, but extends to the legislative, which combines *the representatives of the people themselves*; and therefore were the House of Commons itself to abuse its trust given, as Locke truly says, for the especial benefit of the people, the people may resist them, as well as the King.*"

This is but fair. In other respects, with one or two important exceptions, these sentiments are truisms. It is true that if the executive and legislative quarrel, there can be no judge under the constitution, between them. It is true therefore they can appeal to no one upon earth.

It is true that *if* the people put their power into the hands of rulers, they could not mean harm to themselves by so doing. It is true, therefore, that if harm, instead of good, is done to them, they can appeal to no one upon earth, and may appeal to Heaven if Heaven will hear them.

But here comes the practical misapplication of these truths. It is *not* true that an appeal to arms is an appeal to Heaven; or, if it is, Heaven has so often determined against the people, by allowing unjust governments to quell and punish insurrection, and unjust conquerors to enslave independent nations, that it were better to suppose no appeal was made, than that justice from a just being was refused. It is not true that God and nature never *allow*, though

* See instances of the gross abuse of this trust in vol. i. p. 44 et infra of this Essay, in the case of the Long Parliament, and that of 1679; and illustrations of what would be such abuse, p. 99 et infra.

they may not *prescribe*, to a man, “so to abandon himself as to neglect his own preservation.”

This is contradicted by the whole history of man; and the common and well-founded observation, “*Quem Deus vult perdere prius dementat.*”

It is remarkable that Locke only mentions one instance of direct successful appeal, that of Jephtha; while on the other hand he nowhere adverts (strange omission!) to those cases of successful wickedness which have been alluded to, and to which many many more may be added.

Who were ever more oppressed, or more gallant in their resistance to oppression, than the Hugonots who defended Rochelle? Who more confident in their appeals to Heaven? Who more tyrannical than the other appellant, Richelieu? But the appeal, if it *was* to Heaven, was determined against the Rochellers.

If ever there were confident appealers, or who believed themselves under special protection from above, it was the Scotch Conventiclers. Yet they were allowed, in the inscrutable behests of Providence, to be the victims of the most cruel persecutions, by the most profligate of governments.

These examples might be multiplied *ad infinitum*, and we would fain again, but dare not, touch upon the horrors of Poland.

What then becomes of the value, the certainty, the justice of this appeal, though to Heaven it be? Had Locke said that it was, what it is, an appeal to the sword, which is the right of the strongest, where no other right is acknowledged, it would be nearer the

truth. But to judge of an appeal to the all-seeing power, who judges by rules of his own, unfathomable by man, as if he descended from his height to sit in the judgment-seat below, to dispose of an earthly cause, is only another proof of the many he has given, that, however just his notions may be in theory, the use he would put them to in practical illustrations lamentably fails.

How many erroneous judgments, how many crimes, may not be, and are defended by the delusive generality of that supposed axiom, that God never *allows* a man to neglect his own preservation? Predestination itself could scarcely be better supported, and this alone would demonstrate the defects we complain of in the reasoning of this treatise. For though instinct may lead us, as well as other creatures, to avoid danger, yet every man, by his free will, being left to judge for himself what will or will not hurt or preserve him, how often does he not from appetite, or bad passions, revenge, ambition, lust, avarice, rush headlong on his own destruction? Of this no page in history but affords examples, particularly sacred history; every chapter of which seems a lesson on the improvidence and deliberate design of man to seek his own perdition, instead of safety,—Sampson, Solomon himself, among the Jews; Pharaoh, Sennacharib, at the head of the heathen.

I mention the sacred history in preference, because Mr. Locke seems fond of it, as conveying more distinctly the government and intentions of Heaven.

But should we turn to profane story, examples would be beyond numeration. Alexander, Antony, almost all the Roman Emperors; in more modern times, eminently, Bonaparte; and, as an instance most apposite for Mr. Locke's consideration, the object of his animadversions, James II.

As to the "antecedent law, *paramount to all positive laws of men*, by which the people *reserved* that ultimate determination to themselves which belongs to all mankind, where there is no appeal on earth, that is, to judge whether they have just cause to make their appeal to Heaven," that is, to arms; from the very terms of the proposition, there could be no such reservation. For as it is said to be *antecedent* to all the *positive* laws of men, and therefore to society, it is supposed to be a reservation of power, from a delegation of power, before any such delegation was made. Most strange that a refutation of any position of Locke can be made by the argument *ex absurdo*!

The pertinacity, however, of this doctrine as to the appeal to Heaven, and the perfect certainty of its being favourably decided at last, is not the least remarkable feature of the creed. For whatever the number or strength of the unfavourable decisions, we are never to despair. Sure of our cause (for we are sole judges of its real merits) we are to repeat the appeal for ever and for ever, till Heaven either relents or has satisfied those other objects which *for a time* prevented it from listening to us.

This he illustrates by the case of a robber, against whom, from either a denial of justice, or our own poverty occasioned by the robbery, we cannot obtain redress. "If God," says he, "has taken away all means of seeking remedy, there is nothing left but patience. But *my son, when able*, may seek the relief of the law, which *I* am denied; he, or *his son*, may *renew* his appeal till he recover his right; but the conquered or their children have no court, no arbitrator, to appeal to. Then they may appeal, as Jephtha did, to Heaven, and *repeat* their appeal *till they have recovered the native right of their ancestors*, which was to have such a legislative over them *as the majority should approve and freely acquiesce in.*"*

So here is a conquered people, (conquered in a war, confessed, if you please, by the conqueror himself to have been unjust) but who have acquiesced, even by treaty, in the conquest, say for 500 years; who yet are to preserve their entirety as a distinct and independent nation, having laws and representatives of their own, with power to bind by a majority of votes; and who are still to maintain their original right of resistance during every year of that period; and after treaty upon treaty may have been made, probably favourable to themselves, can rise whenever they are able against the power under whose dominion they have so long covenanted peaceably to live.

Can such a thing be? can this be a theorem in the

* p. 342.

law of nations? “can it be the law of nature, or the law of God?”

If this be sound, Heaven preserve us, (I speak to the honourable ancient Briton, to whom this Essay is addressed,)—Heaven preserve us still from the inroads of the Welsh!

“Ruin seize thee, ruthless king”

was in the language of inimitable poetry, the supposed cry of this injured and gallant nation six hundred years ago; and justly. For if ever there was a ruthless tyrant to his neighbours, it was the atrocious though magnanimous Edward.

Well, according to Locke, though the Welsh had made innumerable appeals to Heaven, and had been denied justice; though their princes had, to save the remnant of their rights, made treaties of condition as honourable in their circumstances as could be obtained by the oppressed from an oppressor; though by these treaties they have been incorporated with their oppressors, and have a share of the legislation of the whole empire, yet these treaties having been extorted by force or fear, they may even now appear in arms against us, “until they have recovered the ancient rights of their ancestors.” Nor are there wanting many high-minded scions of their ancient stock of princes to lead them on,—the Ap Rices, the Ap Shenkins, the Gwillims, Griffiths, and Owens, who still boast, and have a right to do so, of the royal blood that flows in their veins. These ancestors, like their bards, Cadwallo, Urien, and Modred,

“ Whose magic song,
“ Made huge Plenlimmon bow his cloud top't head.”
“ These do not sleep,
“ On yonder cliffs, a grisly band,
“ I see them sit; they linger yet,
“ Avengers of their native land.
“ With me in dreadful harmony they join,
“ And weave with bloody hands the tissue of thy line.”

To be sure, the gracious and youthful being who now represents this line on the throne of Edward, might think it (and we for her) very hard if Lord Dynevor, for example, should attack her in her palace, till she had restored the rights of his fathers, ravished unjustly from them. She might, it is true, plead that she descended from the first Prince of all Wales, King Edward II., but that being a title imposed by force, Locke would have no mercy upon the plea.

To be serious. The Jews are a people who would best illustrate these Utopian notions of this great, but, surely here, mistaken man.

According to themselves, (the proper judges, be it observed, in Locke's doctrine,) the cause of the Romans, who destroyed them, was most unjust. Certainly they, not without reason, thought that Pompey, their original conqueror, had no right to enslave them. And though they had appealed to Heaven various times, and always unsuccessfully, yet they continued to exercise this right, spite of repulse after repulse, till Heaven, who is supposed never to allow a person to *abandon himself, so as to neglect his own*

preservation, allowed them, by that sacrilegious murder they committed upon Heaven's own Messenger, to neglect this preservation, and court their destruction, by hundreds of thousands, from the signal vengeance of Titus.

This is now some seventeen hundred years ago. They are dispersed, and have been persecuted all over the world; and though they have submitted to the laws, and professed allegiance to many states which have tolerated them, they call themselves still a nation awaiting another appeal. According to Locke, they have the fullest right to do so. Heaven may at last think the time is come when it may be proper to do them justice, for the usurpations of Pompey and Titus; and all governments under which they now live can only look upon them as concealed,—not rebels to the laws that protect them, (for that Locke will not permit,)—but legitimate enemies, between whom and such governments the state of war never ceased.

Again, I ask, can this be so?

There remain but two divisions of this famous treatise to touch upon, and after what has been already done the task will be short.

In treating of DESPOTIC POWER, and the DISSOLUTION of governments, we think we perceive the same exaggerated notions of the natural state of man, and the same inconsequential application of the theory to practical cases which we have ventured to point out in the previous discussion.

DESPOTIC POWER Locke defines to be an absolute,

arbitrary power one man has over another to take away his life whenever he pleases." This, he says, is what neither nature gives, nor compact can convey.* The reason? Because nature makes no such distinction between one man and another; and as a man can only give to another that power which he possessed himself, and he had none over his own life, he could not convey it.

This latter reason, we obviously see, can only be convincing to those who deny the lawfulness of suicide, and might, therefore, be denied by all the ancient world, and a considerable part of the present. For its lawfulness is not anywhere expressly denied by revelation; and on the prohibition by natural law there are great differences of opinion, involving much argument, research, and erudition. By this, I desire not to be thought one of those who deem suicide lawful; I only mean to remark, that there are even *now* very many virtuous and well instructed persons who deny its unlawfulness in theory. In practice, it need not be observed, that the instances of it abound. The use we make of this is, that one, an important part of Locke's reasoning against despotism over the lives of men, is unphilosophical, and not logically conclusive.

Then as to nature making no such distinction between man and man, how is this proved?

That there are the strongest and most marked distinctions in other respects, all denoting distinctions

* p. 338.

in power, is clear. Strength of body, of mind, genius, eloquence, sagacity, courage, passions of all sorts ! all these demonstrate that the intentions of nature are any thing but to create equality in the human more than any other species.

But the great proof is to be drawn from what no jurist, or advocate for equality, except Mrs. Wollstonecroft and the Amazons, have ever denied—the inequality of the sexes.

Why are not women endowed with the same rights of citizenship as men ? They have equal, and some of them very superior reason. They may be queens, and choose ministers. Why not be ministers themselves ? They may be executors, guardians, trustees. Why not voters ? They may summon parliaments. Why not be members ?

The same reasoning applies to minors. Why are they in a state of tutillage after they can speak, walk, and have a choice ? Why is the power of choice confined to any particular age, to give them the right of consenting who shall govern them, whether their fathers, before they are in society, or their chiefs afterwards ? Why does the age differ in different countries ? A youth of twenty may judge as well as one of twenty-one ; of eighteen as of seventeen. At eighteen indeed he may be a king, and command an army, but cannot exercise an elective franchise.

Thus all these arguments for equality under the law of nature are contradicted in practice, and are, therefore, mere arbitrary assumptions.

But we all are equal in the eye of Heaven ! That, we see, in the case of the sexes and of minors, is disallowed by the theorists themselves.

How then is it known ? By reason ? If we reason on the differences of our lots that seems to contradict it.

By the justice and equal love of his creatures in the Creator ?

That immediately brings us to religion, which is of a far higher consideration than natural law.

But passing these as over-refinements, and only mentioned as answers to the over-refinement of Locke, let us see what *does*, in his mind, permit the exercise of this right over the life of another.

And this is “*forfeiture*, which the aggressor makes of his own life when he puts himself into the state of war with another.”*

Well then, there *is a lawful* cause for despotism ; and as wars are the most frequent occurrences in the history of man, and, in the antient times especially, there seem to be few others, will not this at once account for the despotic constitutions of most states in the world ? The Assyrian, Egyptian, Persian, Macedonian, and Roman Empires sprang from wars that were ceaseless. Were those of Charlemagne, or the Caliphs, or the Turks, derived from the soft arts of peace ?

So much, then, for foreign wars, in which the conquered having all forfeited their lives, the sentence

* p. 348.

was mitigated on their submission to absolute power in the conqueror.

Might not domestic wars or *rebellions* come within the same rule?

The language against aggressors in war is strong enough. "Having quitted reason," says Locke, "which God hath given to be the rule betwixt man and man, and the common bond whereby human kind is united into one fellowship and society, and having renounced the way of peace which that teaches, and made use of the force of war to compass his unjust ends upon another, where he has no right; and so revolting from his own kind to that of beasts, by making force, which is theirs, to be his rule of right, *he renders himself liable to be destroyed by the injured person*, and the rest of mankind that will join with him in the execution of justice, as any other wild beast or noxious brute with whom mankind can have neither society nor security. And thus, captives, taken in a just and lawful war, and such only, are subject to a despotical power, which, as it arises not from compact, so neither is it capable of any, but is the state of war continued."

Now, it is obvious that this strong language applies itself to the full as much to the aggressors in domestic as in foreign wars. For may not the people, or a large part of them, put themselves in a state of war with their governors, and act like *wild beasts or noxious brutes*, and so *forfeit* their lives, and submit to absolute power like captives? Have there been no

Jack Cades, no Jacqueries among nations? And though this would not justify despotism over the sound part of a nation, it would apply at least to the unsound. I do not say that despotism can *ever* be defended on general principles, but on this reasoning of Locke it can, for thus, subdued rebels are legitimate slaves.

But Locke has a salvo for this, as for all other difficulties, in the law of nature, as *he* interprets it. But we have seen, and we hope demonstrated, the wildness of the strange doctrine, which even in this politically free-thinking age seems to have no abettors,—that there is a distinction to be made among the individuals of the same nation; that the rights of a conqueror even in a just war can extend no farther than over those who actually oppose him; and that those who do not, and the children of those who *do*, are all exempt from the effects of those rights.

Those who espouse this reasoning are safe from the fears of any very lasting despotism; but Heaven forbid that such safety should depend upon the truth of such positions.

We now come to the subject of a DISSOLUTION of a government, which, he says, may be produced by two ways: 1st. Conquest from without: 2d. Commotion within.

With the latter only are we to treat.

This is brought about, he says, “when the legislative is *altered*.”

Put thus nakedly, with submission, this account is

incorrect. For the legislative may alter the mode in which its power is administered, and thus create a *different or altered* legislative, and yet the government will not be dissolved. For, from his own account, when such dissolution takes place, every man returns to his independence and the exercise of his own will.

Now, suppose that from an obstinate withholding of the supplies, or by swamping the House of Lords, the House of Commons, by the disorder this would create, should force the Lords to consent to a law for their own abolition !

This would alter the legislative with a vengeance, yet the *government* would not be dissolved. We should still remain in our social state; still be governed by laws.

In 1689 the experiment was tried. The King fled; the throne was vacant; men neither summoned by the king's writ, nor elected by the people, called themselves the Lords and Commons, and created a temporary governor, who then summoned what he called a parliament, which was no such thing.

Here was an alteration in the legislative, or there never was one; yet the community stood, the laws remained, and England was England as it is at present. So much for this principle.

Locke then enumerates different causes which would occasion the dissolution of the government, being, in fact, a record of the sins of James II. against his people; and very fairly (as we have before observed) allows that the legislative as well as ex-

ecutive may incur this guilt. This, he says, "they do whenever they endeavour to destroy the property of the people, or reduce them under arbitrary power; the consequence of which is, that the power returns to the people who put it into their hands, who may resume their original liberty, and establish a new legislative."*

In respect to breaches of trust producing this dissolution of things, he goes farther than, perhaps, it would be discreet to follow him, when he says, "that to corrupt the representatives through the force, *treasures, or offices* of the society; or openly pre-engage electors, and prescribe to their choice those whom the executive has won to his designs; this cuts up the government by the roots, that is, dissolves it."†

If this be so; if bribery and corruption either of the electors or the elected, if the disposal of the treasure or offices of the society by a minister, will dissolve the government, at what moment of time was the government of England, or of any other country, ever not dissolved?

Seriously to refute this wildness would be any thing but serious; we mention it only (though with every possible respect for the writer) as the crowning vision of this visionary treatise.

* p. 378.

† p. 380.

No. VI.

Veritas obvia, sed requirentibus.

OF LORD RUSSELL AND ALGERNON SIDNEY.

Perhaps I may be forgiven if, whatever may be thought of the opinions contained in this work, I imagine it would be incomplete without some notice taken of questions which belong to the above names in themselves of the greatest importance, and which seem to have divided mankind ever since they were started.

Yet none, in the history of our jurisprudence, of our constitution, or the political conduct of former governors, are of more consequence to the settlement of our notions upon the legal rights of sovereign and subject.

From the time of the Revolution to this hour it has been customary for one great party among us to hold that the existence of the Rye House Plot itself was by no means clearly proved, and that Lord Russell, and Sidney, were martyrs, victims, sacrifices in the cause of liberty, their trials breaches of the law, their executions murders.

Of this opinion are Mr. Fox, Lord John Russell, and Mackintosh; Price, and all republicans, of course. It is in fact one of the sacred articles of the creed of Whiggism, and the act itself reversing Lord Russell's attainder does not scruple to record it as a murder.

Of the breach of the law in the case of Sidney, whatever his intentions, no one can doubt; and he was therefore, in our opinion, legally murdered. But with what justice this is so constantly asserted, nay proclaimed, by the legislature in regard to Lord Russell, we propose to inquire.

That there was a plot, denominated Rye House, from an *imputed* intention to attack and assassinate the King at that spot, (so convenient, as was said, for the design,) will not be disputed. That such a design was broached, canvassed, and more or less entertained by several persons, some of whom were also in communication with others of a higher class, on the possibility of a general insurrection, is equally to be believed.

These last were composed of various leaders of the Whigs, discontented with the government, but having no *direct* design on the person of the King. Their chief, however, was the turbulent Shaftsbury, who kept up an intercourse with both parties through agents, some of whom were among the plotters against the King's life.

Thus the two conspiracies seemed blended together, though of very different characters.

The one had assassination for its object; the other (as Mackintosh would call it,) a mere "*reformatory revolt*."

But, with these differences in the minds of the parties, that a conspiracy of a treasonable nature did exist, called by the common name of the Rye House

Plot, is clear. If this was an invention, then all history is an invention.

This is admitted by Mr. Fox and Lord John Russell themselves, and also by Hallam.

The language of the former is remarkable.

“Of the Rye House Plot,” he observes, “it may be said much more truly than of the Popish, that there was in it some truth, mixed with much falsehood; and though many of the circumstances in Kealing’s account are nearly as absurd and ridiculous as those in Oates’s, it seems probable that there was among some of those accused, a notion of assassinating the King; but whether this notion was ever ripened into what may be called design, and, much more, whether it were ever evinced by such an overt act as the law requires for conviction, is very doubtful.”*

The question is, what was the extent of the design had the attack at the Rye House taken place? Whether it formed a part of the intended general insurrection? Whether even that was ever really designed? And, above all, whether Lord Russell had any, and what share, in either of these supposed conspiracies?

Were the inquiry of a common occurrence in the history of ordinary crime, there would probably be little occasion for discussion; but being of a high political nature, involving, not only the lives of kings, but the revolution of states, and the most vital questions on the principles of government;—as the

* History of James II., p. 50.

greatest, as well as very mean names were brought into peril, and experienced consequences from it fatal to themselves, their families, and their party;—as these consequences extended themselves afterwards so as to influence the fate and condition of the whole nation;—there is scarcely an epoch or event in our history which has been so powerfully searched, or so passionately discussed, as political bias, principles, or prejudice animated the various disputants who have embarked in the contest.

One would have thought that, at this distance of time, passion, as well as self-interest, would have long subsided, and left the historian, the lawyer, or the statesman, free from all influence, but the simple love of truth, in making the inquiry. But the reasons above enumerated account for the perpetuation of the feelings which prompted the pens as well as the conduct of the original and contemporaneous champions for or against this historical problem. Lord Russell, besides having sealed his principles with his blood, has become the head, as it were, of a sect in political controversy; and, like other heads of sects, has filled his followers with an enthusiasm, both blind and ardent, not easy to be extinguished. Moreover, in addition to his party disciples, he is represented by an extensive and distinguished posterity, all of whom very naturally embalm his history in their memories; so that the question of his legal guilt or innocence continues to be agitated with almost as much fervency as ever. Not a little, too,

is contributed to this ardour, both in attack and defence, by his extreme and acknowledged religious and political bigotry on the one hand, and the merited enjoyment of as much private virtue, probity, and honour as ever existed, on the other.

Even, therefore, granting his *legal* guilt, that such a man should be cut off by the axe of the executioner, of itself engages our tenderest sympathy. But can we fail to add to this the pathetic interest, amounting to absolute veneration, inspired by the noble yet tender virtues, the conjugal yet energetic exertions, of his matchless consort. More of the interest about Lord Russell is owing to this admirable woman than perhaps we acknowledge or are aware of. To have possessed so much of her devotion, so much of her love, makes us enhance merits which were certainly mixt with many defects. When we read in her letters to him of her fondness for the pillow *on which his dear head had rested*, every man who knows the value of a virtuous woman's affection, feels his heart thrill, and in thinking of Lord Russell we think not of the indiscreet and rash patriot, but only of the happy husband.

Lord and Lady Russell in fact, from their characters and their fate, notwithstanding his faults, have become the favourites of history. His legal guilt is forgotten, even by those who blame him, in his moral probity. By those who approve him he is elevated to a pitch of almost adoration.

When he fell, therefore, his friends were struck to

the heart; and many of his opponents (I for one) would have been glad had he been spared.

Mackintosh calls him the man of most *unspotted* virtue who ever suffered on an English scaffold. If this mean in allusion to his integrity in private life, and his *sincerity* in his mistaken public conduct, probably he was so. But if, by *unspotted*, is meant, that he never intended insurrection, or that he was either just, compassionate, or wise in the political measures he pursued, it may not only be doubted, but must be strenuously resisted. He was as bigoted, and almost as indifferent to blood or real justice, in his violence against popery, as Mary against protestantism; and few but bigots, on the other side, will deem Mary *unspotted*. Of this, his public doubt of the King's power to remit the most cruel parts of the sentence against Stafford, and his whole violent conduct in the Popish Plot, are irrefragable proofs.

With all his virtues, therefore, we are not to shut our eyes to truth, if we can find it, which, I think, we can. We are not to be dazzled by a colouring which seems to be false. Above all, we are not to join in the foolish intoxication of the party cry, — “the cause for which Russell bled on the scaffold, and Hampden in the field.”

Of the cause of Hampden this work has already ventured an opinion. Into the real cause and real case of Russell we will now proceed to inquire.

In doing this, it is not our intention, nor is it

necessary, to rake up the trials of the under conspirators adjudged to death for the plot against the King's life at the Rye House. Many of them died confessing the guilt of having *intended* it; but it is the less necessary to canvass the question of the participation in it by Lord Russell, Monmouth, and other leaders; because, after due consideration, I think it must be cheerfully conceded, that none of them had any share in that design. We believe the dying asseveration of Lord Russell, that such an intention was abhorrent from his nature. We, or, at least, *I*, do *not* believe him when he declares, on his trial, that he went to the meeting of his fellow leaders at Shepherd's, who conferred about the rising, and the feasibility of attacking the King's guards, "by accident;" and purely to taste wine, the landlord of the house being a wine-merchant. As little can we believe, that being of the Council of Six, which directed the treasonable communications with the Scotch malcontents at home, and with Argyle abroad, they assembled at each other's houses (his among them) merely to talk of news. However we may forgive this assertion with a view to save his life when upon his trial, (and, in so far, proving how inferior he was in heroism to Sidney,) no man who has read, not merely the trial itself, but his own account of his conduct in his petition to the King, but must be fully convinced that these declarations were untruths, and that he joined the other Whig leaders at Shepherd's, viz. Monmouth, Grey, Fergusson, and Arm-

strong, and also the Council of Six afterwards, with a view to discuss a scheme of insurrection against the government.*

In treating of this question, for the present I totally throw out of the case all that was sworn by the two witnesses most objected to on the trial, Rumsey and Lord Howard. I also *for the present* lay aside the accounts of Lord Grey, and of Sprat, so much, but not at all, I think, conclusively, oppugned by the Whig writers. I do so, not because they are *proved* to be unworthy of credit, (as Mr. Fox thinks of Lord Grey, and Lord John Russell both of him and Sprat,) but because I wish first to canvass what may be called the *moral*, not legal, guilt of Lord Russell, and confine myself therefore to what may be called moral proofs, drawn from Lord Russell's own and his friends' accounts, particularly that of Burnet, the confidant of his latest moments, and participator of his party principles.

For to treat this question methodically, it may be proper in the outset to observe, that there are two points of view in which it is to be considered. One, as to the *legal*; the other, as to the rational proof of the fact. My intention is to treat of the last, first; because the real intention forms the real guilt or innocence of Lord Russell in the eye of truth and reason, though not of law.

For if he was morally guilty of a design to control

* It was not less to discuss a scheme of insurrection against the government, that he went to dissuade Shaftsbury from the mad one he proposed.

the government by an armed force, and the law was not strained to convict, but the evidence fairly left to his jury, (to all which we shall come in due time,) there must be an end of the outcry against that government for defending itself. In that case the honour of martyrdom, and of having been sacrificed by a tyrant to his love of vengeance, must be denied him; even although his profession be believed, (as I am sure it is by me,) that he had formed no design against the life of the King.

The fact, then, of his intention, and the nature of his consequent conduct, is the real fact, after all, into which, with our views, we are first to inquire, independently of the question of law and law proofs, which, though of immense consequence as another question, (which we by no means mean to evade,) has nothing to do with the merits or demerits of Lord Russell towards the country.

In the first place, then, read his own words in his petition to the sovereign, whom he confesses he had offended; how, except by having offended against the law, it would be difficult to comprehend.

“ Your petitioner does once more cast himself at your Majesty’s feet, and implores, with all humility, your mercy and pardon, still avowing that he never had the least thought against your Majesty’s life, nor any design to change the government; but humbly and sorrowfully confesses his having been present at those *meetings, which he is convinced were unlawful*, and justly provoking to your Majesty; *but being betrayed by ignorance and inadvertence, he did not decline them as*

he ought to have done, for which he is truly and heartily sorry ; and, therefore, humbly offers himself to your Majesty, to be determined to live in any part of the world which you shall appoint, and never to meddle any more in the affairs of England, but as your Majesty shall please to command him."

Such was the petition of this supposed injured and innocent victim; this guiltless sacrifice to the vengeance of laws which he is said never to have offended ; or which, if he did offend, it was from a noble sense of duty to his oppressed country, which, to relieve, he sacrificed his life.

It is plain all this evaporates and becomes nothing from his own account, and that far from a thought of *risking* any thing for the sake of the country, much less of hazarding his life for it, he was *betrayed* into attending, or rather not declining, these patriotic meetings, by *ignorance* and *inadvertence*.

It is far from our wish to deteriorate from this honourable but mistaken man's real merit, by pointing at, what must strike every one, how little of the hero was here mixed with the patriot; nor would a word of this humiliating document be republished but for two important considerations, which the mere truth of history, if it would be useful, absolutely requires to be impressed,—First, that he could not be the martyr to liberty who could thus humble himself before the tyrant who destroyed it, and who only showed himself on the side of his country from ignorance and inadvertence. Next, that far from asserting that he was *falsely* accused, (*I speak not*

here of illegality,) he owns plainly, and beyond all cavil, that he did attend *meetings* (for the word is plural) which he knew to be *unlawful*.

So far, therefore, he confesses that he had offended the law, to what extent may be otherwise ascertained; but this is a complete answer to his own assertions upon the trial, that his attendance at the consult at Shepherd's was by *accident*, to taste wine; and that the meetings of the Council of Six were merely to talk of news.

The confession in the petition does honour to his candour, but establishes his guilt, for guilt it was, whatever its amount; and must for ever silence the strange prejudice, that he went to the scaffold *innocent* and *unspotted*, however pitied.

What, therefore, shall we say to those who, knowing these facts, hold him up to this day as a man who had justly incurred no punishment, because he had committed no crime? What to Burnet, who, writing with this very confession before him, has the profligacy to say that he was convicted of treason for being present by *accident*, or for some innocent purpose, where treasonable matter was discoursed, without bearing a part in it?* Both the Bishop and Lord Russell himself allow that this amounted to misprision of treason, though no more. This, if true, that he took no part, and was there by *accident*, might be allowed by the law. But the fact of its being accidental is contradicted, we shall see, by the Bishop himself, who had forgot it; and at any rate if

* Burnet, i. 554; followed by almost all the Whig writers.

there was misprision of treason, it establishes the mooted point, that something amounting to treason was actually contemplated.

What share in that contemplation Lord Russell had, independent of his attendance at Shepherd's, we will now proceed to inquire on the authority of the same right reverend partizan, who, though he could advisedly misrepresent in his favour, cannot certainly be suspected of doing so against him.

I have said that we throw out of the case, for the present at least, the obnoxious evidence of Howard and Rumsey, and also the accounts by Sprat and Lord Grey. The relation of Burnet will of course be thought a purer source of information.

Lord Shaftsbury, whose treasons are not disputed, had been in communication with Monmouth, Russell, Essex, and many others of a lower class, the latter, by the avowal of all, ripe for rebellion, and only waiting for leaders.

What sort of communication this was, may be gathered from Burnet's own words. "The Duke of Monmouth, *who understood what a rabble was, and what troops were*, looked on this,"—as what? Treason which he ought to disclose to the state? No! "*A mad exposing of themselves and of their friends! The Lords Essex and Russell were of the same mind.*"*

Now, I would rest the whole case of the moral proof of their guilt upon this simple account. Understood what a rabble was! and what troops were!! Do men usually estimate the power of rabble *against*

* Burnet, i. 537.

troops, both obeying the same King, from mere curiosity? As the troops are not even accused of any design against the rabble, the inference is plain, that the comparison was made to ascertain the chances of the rabble against the troops, and with what view cannot be doubtful.

Here, then, is incontestible proof, out of the mouth of the Whig confidant of these lords himself, that they were in confidential communication with the arch-rebel Shaftsbury, and knew of his projected treason, which, though they did not approve, they only disapproved because they were averse, not to the treason, but to "*a mad exposing of themselves and their friends.*"

So far, therefore, we have got, that to the treason itself they were friendly, provided they could get over the danger from *troops*. They were in communication with Shaftsbury about it; and, though they are represented as disapproving of his *immediate* plan, no man in his senses can believe, from this account of Burnet, that the object of this communication was to deter him from more than waiting for a better time to commence the insurrection.

In this situation the Duke of Monmouth, says Burnet, "gave an appointment to Lord Shaftsbury, or *some of his friends*, to meet him and *some others* that he should bring along with him, at Shepherd's, a wine-merchant in whom *THEY* had entire confidence. The night before this appointment Lord Russell came to town on account of his uncle's illness. The Duke went and told him of the appointment,

and desired he would go thither with him. He consented, the rather because he intended to taste some of that merchant's wine. At night they went with Lord Grey and Sir Thomas Armstrong. When they came they found none there but Rumsey and Fergusson, two of Lord Shaftsbury's tools that he employed; upon which, seeing no better company, they resolved immediately to go back, but Lord Russell called for a taste of the wines, and while they were bringing it him up *Rumsey* and *Armstrong* fell into a discourse of surprising the guards. Rumsey fancied it might have been easily done. Armstrong, that had commanded them, showed him his mistakes. This was no consultation," says Burnet, "of what was to be done, but only of what might *have been* done. Lord Russell spoke nothing upon the subject; but, having tasted the wines, went away."*

So far the Bishop's account, which, in justice to the case of Lord Russell, we have set forth at large, that every possible advantage may be given to it, and that every one may judge for himself of this the very utmost that can be said in its defence.

And what do we gather from it? In the first place, an incontestible proof that they had entertained, with Shaftsbury, a design to rise in arms as soon as it could be done, without "*a mad exposing of themselves or friends.*"

Next, a meeting *appointed* with Shaftsbury, or *some of his friends*, to confer upon it; and the attendance of Lord Russell at that meeting, *fully apprised*

* Burnet, i. 537.

and invited to it by the Duke of Monmouth, with whom he had *previously* been in the habit of discussing these plans of Shaftsbury. Although, therefore, they might have gone for the express purpose of dissuading him from *this particular plan*, not the less, *the premises considered*, was the purpose to discourse of treason; not the less shameful is the disingenuousness of Burnet's assertion, that the attendance was either *accidental*, or for an innocent purpose. Grant that Lord Russell came to town on his uncle's illness; grant that he went to Shepherd's *the rather* because he wanted to taste his wine; is this in the least incompatible (*the premises, as I have said, considered*) with the most treasonable intentions? If not, the remark is a mere blind, set up by the Bishop, easily seen through, and impossible to be believed even by himself. What should we say to that man's innocence, who, being asked to help in blowing up a house, only disapproves it, and refuses, because there may be in it a mad exposure of himself?

But Rumsey and Fergusson were tools employed by Shaftsbury!

They might be so; but whom else did they expect to meet? Was not Shaftsbury desired by Monmouth to come himself, or *send his friends*? And are tools and friends such very distinct characters, especially in party, and still more in conspiracy, that the tools are not to be used? Rumsey, at least, had been a distinguished officer; and Fergusson, however revolting, was the favoured adviser of Shaftsbury, as he afterwards became of this very Monmouth, who is

stated so to have despised him. Nay, on the evidence of Shepherd, which is not impugned like Rumsey's or Howard's, he was, on this identical occasion, the very messenger sent by *Monmouth* to ask the loan of Shepherd's house for the meeting. Shepherd, too, tells you, that he had notice *before-hand* that Rumsey and Fergusson, as well as Monmouth, Russell, Grey, and Armstrong, would be at the meeting, which, be it remembered, was appointed by Monmouth. Thus, all were there who were expected to be there, and none who were or might not be expected. Shepherd adds, he was desired by Armstrong to keep his servants out of the way, so that he served them himself. Was this indication of that "*innocent* purpose," which the Bishop talks of; or does it tally with that asserted aversion to Shaftsbury's tools which would have made Monmouth and Russell retire *immediately* had it not been for the tasting of the wines?

Then, as to the seizing the guards, the Bishop, good, easy, and ingenuous relator, would have you believe it was a mere random casual discourse, a sort of interlude, between Armstrong and Rumsey, who "fell upon it" by chance, while they were bringing up Lord Russell's wine, who said nothing on the subject. But what is the testimony of the wine-merchant himself, who certainly could not have heard the conversation if it only passed while gone for the sample? Why, (I quote the words of the trial,) speaking of the whole company, he says, "the sub-

stance of their discourse was how to surprise the King's guards; and, in order to that, the Duke of Monmouth, my Lord Grey, and Sir Thomas Armstrong, as I remember, went one night to the Mews, or thereabouts, to see the King's guards; and the next time they came to my house I heard Sir Thomas say the guards were very remiss in their places, and not like soldiers; and the thing was feasible if they had strength to do it." *

This obviously points at something which had been previously done by Monmouth himself, though not by Russell, who was no soldier. But there were but two meetings at Shepherd's, and this "*next night*" mentioned must have been that when Russell was present, for by Burnet's own account it passed while he was by, though he said nothing. Let any man therefore judge, after this actual visit by the officers, Monmouth, Grey, and Armstrong, with a view to the enterprise, which *they reported as feasible had they strength for it*, whether this bears the colouring which this reverend partizan would give to it, as a mere casual conversation *fallen upon* by two individuals only, as if upon a chance subject, and while the person who deposes to this conversation was absent fetching the wine.

Upon the whole there is scarcely a word of this

—* Lord Russell's trial, Shepherd's evidence; which thus completely supports Lord Grey's, who in his history tells you in detail the visit of himself, Monmouth, and Armstrong, to inspect the guards, *previous* to this meeting at Shepherd's. (History of the Rye House Plot.)

defence of Lord Russell, (defence against the charge of having been engaged in a treasonable design, and cognizant of such a design in others, his colleagues,) that can bear the touchstone of common sense, or is not refuted by itself. From its own showing it is false that the attendance at Shepherd's was accidental; it is false that its purpose was innocent; it is false that the business discussed was new and unexpected; and if Shepherd's evidence, which is not broken into, is considered, it is false that the presence of Ferguson could be unknown to Monmouth, who had sent him to announce the meeting. But it is particularly false that the subject of seizing the guards was confined to the two persons mentioned, fallen upon by chance in the absence of Shepherd, and not connected with the very purpose of the discussion.*

That Lord Russell spoke nothing "on the point," by no means proves that he was not cognizant of it; and, considering the object of the conclave, that he did not entertain it. He himself allows that he heard it: he does not say he opposed, though he affirms he disapproved it. If he did so, he confined it to his own breast; he confesses that he concealed it.†

* It was probably one of the plans of Shaftsbury which they had denominated "a mad exposing of themselves," though here Monmouth, who had found the guards remiss, did not seem to think so.

† "It is, I know, inferred from hence, and pressed to me, that I was acquainted with these heats and ill designs, and did not discover them. But these would be but misprision of treason at most."—(Lord Russell's paper delivered to the sheriff). We doubt exceedingly, considering the preliminaries, this law of Lord Russell.

Upon the whole, the looseness, credulity, and blindness (I had almost said the wilful blindness) of the Bishop, never evinced themselves so palpably as in this most lame and impotent account.

Pursue it: it will be found all of the same character; and this very defence of Lord Russell sinks him for ever under the weight of truth, however his crime is sought to be disguised.

That crime, again recollect, is not, in aiming in his own person at the death of the King; but concurring and being instrumental to raise insurrection; which, though he did not intend, might possibly end in it.

Even Mr. Fox allows "that in regard to the *conspirators* (he is forced to use the word) of a higher rank, there is unquestionably reason to believe that they had *often* met and consulted, as well for the purpose of ascertaining the *means they actually possessed*, as for that of devising others for delivering their country from the dreadful servitude into which it had fallen; and thus far, their conduct appears clearly to have been laudable."*

By "means they actually possessed," we suppose Mr. Fox here intends peaceable means. High as he carries the right of the subject in abstract theory, he cannot by this intend an armed insurrection *as laudable, and warranted by the law*. If he does, he may quite as well defend the killing of the King, which is a part of an armed insurrection, or it is nothing.

* History of James II., 50.

If he does not, we shall see that Lord Russell is far from being covered by the shield he throws over him.

At the same time, "*means actually possessed,*" and "*devising others,*" are words so ambiguous, that they scarcely, certainly not exclusively, express *legal* means.

After the meeting at Shepherd's, which was about October 1682, Lord Shaftsbury, from both fear, and disgust at his allies failing to come up to his views, (not, as we have seen, that they were unwilling from principle, but because it was "a mad exposing of themselves,") fled to Holland, where he died. "He had, however," says Burnet, "one meeting with the Earls of Essex and Salisbury before he went out of England. Fear, anger, and disappointment had wrought so much upon him, that Lord Essex told me he was much broken in his thoughts. His notions were wild and impracticable, and he was glad he was gone out of England; but said he had done them already *a great deal of mischief*, and would have done more if he had stayed."*

No doubt he had; for, by what they all confess, (Russell and Burnet among them, and eminently Essex himself, from this very passage,) he had involved them, if not in positive treason, yet in that traitorous misprision of it which amounts to a capital offence, and, in fact, is high treason itself. †

* Burnet, i. 537.

† "If there be any probable circumstances of assent, *as if one goes to a treasonable meeting, knowing beforehand that a conspiracy is intended*

Being, then, thus compromised, what, according to the same historian, do these lords do? Do they repent, or reveal their traitorous meetings, or Shaftsbury's actual treason? No! that would be too much to expect. But do they abandon their own designs? We shall see.

"At *first*," says Burnet, "the lords, and all the chief men of the party, (of course Russell and Essex among them,) saw their danger, from forward sheriffs, willing juries, mercenary judges, and bold witnesses. So they resolved to go home and be silent, to speak and to meddle as little as might be in public business; and to let the present *ill* temper the nation was fallen into wear out."

So, then, according to the Bishop, not to rise against the King in arms, was ill temper in the nation! But not to mention that the national feeling was here *confessedly* against them, and, therefore, denominated *ill temper*, it will be curious to observe the reason assigned, as follows, for this temporary quiescence.

"For they did not doubt but the court, especially as it was now managed by the Duke, would soon bring the nation again to its wits, by their ill conduct and proceedings."*

against the king; or being in such company *once by accident*, and having heard such treasonable conspiracy, meets the same company again, and hears more of it, but conceals it; this is an implied assent in law, and *makes the concealer guilty of actual high treason.*" (Blackstone's Comment. iv. 120, under Misprision of Treason.)

* Burnet, i. 558.

Such was their thought. May we not say, their "*wish* was father" to it?

We, here at least, see in Burnet, an exemplification of the character of a thoroughgoing, theoretical, or ambitious reformer. He is angry if a nation dare to be contented against his permission or principles; and if they are too satisfied to join him, lies by in ambuscade, praying for the happy moment when they may change their satisfaction for discontent. We have already pointed out that even Lord John Russell (of course interested for his ancestor's reputation) allows that the temper and even the grievances of the nation* did not then justify insurrection.

But to proceed: what conduct did these lords, discontented with the nation's content, pursue to prove their resolution to be quiet? They secretly plotted preparations for an insurrection as soon as their *hopes* of a change from this ill temper should be realized, and happier times be riper for revolt. Happy had they waited longer.

In proof of this I would rather give the Whig historian's words, in his narrative of their practices, than convey a mere opinion of my own.

"The Duke of Monmouth," he observes, "resolved to be advised chiefly by Lord Essex. *He* would not be alone in that, but named Lord Russell, against whom no objection could lie†; and next to him *he*

* Supra.

† This loose mode of expression, though only characteristic of the

named Algernon Sidney*, a man of most extraordinary courage, &c. He (Sidney) prevailed on Lord Essex to take Lord Howard into their *secrets*, though Lord Essex had expressed such an ill opinion of him a little before to me, as to say that he wondered how any man would trust himself alone with him. Lord Russell had the same ill opinion of him; yet Sidney overcame both their aversions. Hampden, also, was taken into their *secret*."†

It is obvious, then, that there was a secret; and what it was the Bishop goes on to explain.

It is obvious these men were the Council of Six, and "with these," says Burnet, "the Duke of Monmouth *met often*."‡ He also, from his connection and influence with Scotland, "met often with Lord Argyle while he was in London, and had many conferences with him on the state of that kingdom, and of what might be done there." Here the reader need not be reminded that Argyle was, justly, the determined enemy of the government, and watching every opportunity to avenge the wrongs he had suffered; wrongs, however, which the Duke and the other lords had never experienced. "What might be done there," (in Scotland) needs, therefore, no interpretation.

writer, we do not understand. Does he mean that Essex named him, or the Duke? and against whom does he mean that any objection *did* lie?

* Qy. *Who* named? but no matter.

† Burnet, i. 539. The above account is abridged, but not as to any fact.

‡ Lord Russell said they met but *twice*. The Bishop, his friend, therefore contradicts him.

But that it may be the less necessary, Burnet adds, that they assumed a mask to disguise their designs. "And he (the Duke) thought the business of Carolina was a very proper *blind* to bring up some of the Scotch gentlemen, *under the appearance of treating about that.*"* So, upon this, they agreed to send one Aaron Smith to Scotland, to desire that some men of *absolute confidence* might be sent up for that end."

We pause here for a moment, to say that this again confirms the testimony of Grey and Howard, who, though they might be villains, might also speak truth.

"In the beginning of April (1683)," proceeds the Bishop, "some of them came up. The person that was most entirely trusted, and to whom the journey proved fatal, was Baillie (of Jervoisewood). † I went to him in great simplicity of heart, thinking of nothing but Carolina. But in a few weeks I found they came not to me as they were wont to do, *and I heard they were very often with Lord Russell.* I was apprehensive of this, and Lord Essex being in the country, went to him to warn him of the danger I

* A great colony of Presbyterians in Carolina was very much patronised about that time by Shaftsbury, and became what was called the *cant* by which he and his associates disguised their operations.

† He was a great man, and a patriot, and the cruelties and oppression exercised upon his country justified all he did, or could do, to obtain security for her. He was also shamefully betrayed by his associates, and suffered death in the cause. But the cause of Scotland was not that of Lord Russell; nor if it had been, does it alter the view of the question, which, be it always recollected, is not whether England could justify an insurrection, but whether Lord Russell had been guilty of intending one?

feared Lord Russell might be brought into by this conversation with my countrymen."

Why was this fear? The answer is plain. His countrymen were traitors in the eye of the law.

Essex seems to have discountenanced this interference, and with reason, for he was as much involved as Russell, and afterwards, as we shall find from this history*, confessed to his wife that the allegations against him were true, which occasioned his self-murder in the Tower. He assured Burnet he need not fear Lord Russell, who would do nothing without him (which was true, for both were equally embarked). He (Essex) agreed, too, "that things were not yet ripe enough, and that an ill-laid and ill-managed rising would be our ruin."† Again, then, we see that their whole mind was bent upon a rising, though this might be premature; and how Lord Russell (man of truth, as I believe he was,) could represent these meetings as merely to talk of news, except, indeed, as a blind to his jury, no one can explain.

That Essex, however, on this occasion, was merely parrying Burnet's officiousness, is plain; for at that time the Council of Six, from the Bishop's own account, had become thoroughly involved with their Scotch allies, the men of *absolute confidence*.

"What passed," says the Bishop, "between the Scotch and the English lords I know not, only that Lord Argyle, who was then in Holland, asked, at first, 20,000*l.* for buying a stock of arms and ammu-

* Burnet, i. 552.

† Id. i. 541.

niton, which he afterwards brought down to 8,000*l.*, and a thousand horse to be sent into Scotland. *Upon which he undertook to conduct that matter. I know no farther than general hints of their matters.*"*

This is more than usually candid of this reverend politician; but farther, I think, it is not necessary to know; for if this intercourse with Argyle and the Scots, whom they themselves had sent for, was not treason in the Council of Six, and, therefore, of Lord Russell, there never was a traitor.

Here, however, we may refer to the confession of Carstairs, one of the Scotch agents, made, indeed, in fear of torture, but nowhere contradicted, forming the evidence against Baillie, and preserved among the *documents* in Sprat.† Let any man read that confession, and doubt, for a moment, Lord Russell's *treasonable* correspondence with Argyle.‡ "Having acquainted Sir John Cochrane," says Carstairs, "with the Earl's demands of 30,000*l.* sterling, and 1,000 horse and dragoons, Sir John carried him to the Lord Russell, to whom the deponent proposed the affair, but being an absolute stranger to the deponent, had no return from him at *that time*; but afterwards, having met him accidentally at Mr. Shepherd's house, where the Lord Russell had come to speak to Shepherd about the *money above mentioned*,

* Burnet, i. 541.

† History of the Rye House Plot.

‡ i. 541. Will Mr. Fox, or Lord John, any lawyer, or any man of sound mind, say here was no treason intended, because the proposal was not adopted.

as Mr. Shepherd told the deponent, the deponent, when they had done speaking, desired to speak to the Lord Russell, which the Lord Russell did; and having reiterated the former proposition for the 30,000*l.* sterling, and the 1,000 horse and dragoons, he, the Lord Russell, told the deponent they could not get so much raised at the time, but if they had 10,000*l.* to begin, *that would draw people in, and when they were once in they would soon be brought to more*; but as for the 1,000 horse and dragoons he could say nothing at present, for that behoved to be concerted on the borders.”*

After this, what are we to think of the blindness of *party* historians, men of truth and honour, though they be,—Mr. Fox, Lord John Russell, and Sir James,—in breathing a doubt of the *proved* guilt of Lord Russell; I speak not here of the trial at law, but in foro conscientiæ. How, after this, can Mackintosh gravely adopt Lady Russell’s representation, that it went no farther than talk.

To return to Burnet: he goes on to say, that Hampden offered to give him all particulars; but this the wily priest, with the penalties of misprision fully before his eyes, prudently refused. “I told him,” says he, “*that till by an indemnity the whole matter was buried, I would know none of those secrets, which I might be obliged to reveal, or to lie and deny my knowledge of them.*” He adds, however,

* Carstair’s Deposition, apud Sprat, 119, and Trial of Baillie of Jervoisewood.

that he knows no money was raised; but the thing got some vent in Scotland, which was let out by some of their teachers.*

To conclude this account of the Council of Six, we have to add, on the same authority, that when the Rye House Plot for the assassination of the King had got wind, and there were universal suspicions and arrests of all whose names were implicated, whether in that particular plot or not, Baillie and the two Campbells, who came to confer with the Council of Six, were seized in London, and examined by the King himself, and being questioned about the design against his person, denied all knowledge of it. But being asked "if they had been in any consultations with lords or others in England, *in order to an insurrection in Scotland*, Baillie faltered at this, *for his conscience restrained him from lying.*"†

I know not what additional support this opinion of the existence of the plot will receive from it; but we here may recollect what Mackintosh relates, (and at least does not refute,) on Montague's authority, that King William was aware of it. ‡

We finish this part of the story with the account of the melancholy and honourable, but too conscious Essex. Being brought before the council he was "in much confusion;" and when sent to the Tower "fell under a great depression of spirit." He sent a very melancholy message to his wife, *that what he was charged with was true; he was "sorry that he had ruined*

* Burnet, i. 541.

† Id. p. 552.

‡ Supra.

her and her children." He afterwards, indeed, denied his guilt to his brother in law, Lord Clarendon, but this he did by desire of his wife to reveal nothing till she had seen him.* That never happened, for his unhappy and well known catastrophe by self-murder, put an end to all farther investigation.

Can we wind up this account of the Council of Six without touching on the confession of their guilt by Monmouth and Hampden. The latter, to save his life, when Grey, taken in Monmouth's invasion, was prepared to testify against him, pleaded guilty and craved mercy. But this he did, says Burnet, "in a manner so mean and humiliating, that it gave his spirits a depression and disorder which he never could quite master, and had a terrible conclusion, for about ten years after, he cut his throat."

With regard to Monmouth's confession, after the other proofs which have been adduced of the guilt of himself and colleagues, it becomes a mere matter of curiosity, nor is it of the smallest consequence to know whether, or what he confessed. But Mr. Fox has affixed the authority of his name to an opinion that "when we reflect *upon all the circumstances of his communications with the King*, they deserve not the smallest attention." This, like many other opinions of Mr. Fox on the transactions of these times, which we have noticed, seems adopted without due care, or at least without due fairness, evidently the result of the bias of his mind, rather than the impartial judgment of a sober

* Burnet, i. 552

historian. He has not even vouchsafed to give his reader any light whatever as to any one of those circumstances which he says render the communications of Monmouth "unworthy the smallest attention." It may not, therefore, be foreign to the object of this inquiry to examine what warrant there is for this confident assertion.

Here, again, shall we do wrong on looking for the history of the facts in the same historian, whom, for his total absence from all inclination towards the court, we select as the best support of our opinions on the conduct of Lord Russell and this very Duke of Monmouth. This reference, with others, at least as little prejudiced against Monmouth, will enable the reader to judge for himself.

From Burnet's account, then, Halifax, to serve himself, wishing to make Monmouth a balance against the power of the Duke of York, induced the King, who still "*passionately* loved him," to promise him forgiveness and restoration to favour on his making confession of the share he had in the conspiracy. "Upon which he consented to satisfy the King;" and, "as was agreed, made a humble confession of his offences in *general words*." These words are not given; but the next day the King said he had confirmed all that Howard had sworn. This was carried to the Duke, who denied it, adding, "that Lord Howard was a liar and a rogue." Liar and rogue as he might be, the conspirators on their trials upheld his truth when they thought it told for them; that

is, when *at first* he asserted, (though one of the Council of Six,) that there was no plot. Whether that council were innocent, after what has been stated, the reader may judge.

The next Gazette, however, mentioned, "that the King had pardoned him on confessing the *late plot*." "Plot," as Lord Halifax himself said, to comfort him, "might signify as much, or as little, as a man pleased;" but it cannot be denied that it, at least where the state is concerned, means something against that state, though not *necessarily* high treason. This is left to every man's judgment, who ponders what has gone before.

However this may be, *after* Monmouth's pardon had passed, so that he had no personal fear to influence him, Halifax, telling him they had had dangerous consultations, (which, indeed, is no more than what Russell himself had confessed,)* "got him to write a letter to *that purpose*, which he carried to the King, and *the King was satisfied*." Could he have been satisfied, after Monmouth had so flatly denied his public assertion, unless he had retracted the denial?

That he had retracted that denial, and revealed his own guilt, and that of his associates, is pretty clear, from the agony with which he was immediately seized; "*an agony*," says Burnet, "*like despair*," which made him demand his letter back again. This was granted, and he was immediately forbidden the court. †

* Supra.

† Burnet, i. 575.

So far the Bishop; and even from him, I confess, I see no warranty for the sweeping assertion of Mr. Fox, that these communications of Monmouth deserve not the smallest attention. Coupled with all the preceding narrative of the transactions of the Council of Six, they deserve *every* attention; nor would it be easy for the most blunt understanding to refuse its assent to the proposition, that, from this mere showing of Burnet alone, the guilt of a conspiracy (*that* with Scotland, at least,) had been confessed by Monmouth.

What shall we say, then, when we turn to other authorities, and fuller accounts, as we now think it right to do, particularly that of Sprat, which probably would be thought by Mr. Fox to be equally unworthy of attention? Where he sets forth *proofs*, however, and not opinions, Mr. Fox will not deny his veracity. From his, and other authorities, still less questionable, because drawn from actual letters, journals, and written documents, I find the real case of Monmouth's confession so clearly elucidated by Lingard, that I venture to transcribe much of his account, and the evidence he vouches for it.

In Monmouth's first letter to his father he confined his protestations of innocence to the charge of an intent to murder. Of this, indeed, those who actually confessed that charge, and even the most adverse of the witnesses against him, acquit him. We have, in truth, already and cheerfully acknowledged that that charge could only be founded on

legal consequences, and not on a positive actual intention, whether in him, or Lord Russell, or Sidney himself. But, by confining his protestations of innocence to this charge, the inference of Lingard is no more than sound, that he tacitly acknowledged the design of exciting insurrection, which, be it remembered, was emphatically insisted upon on the trials both of Russell and Sidney.

In a second letter, quoted by Sprat, Monmouth begged he might be spared the ignominy of a prison and a trial, and requested advice how he might best implore the forgiveness of the Duke of York, “which he would do as an outward form, but with all the sincerity in the world.”* Why this, if there was no conspiracy?

Upon this he was introduced to the two brothers, and on his knees confessed and condemned, though innocent of any design against the royal life, *the part which he had taken in the disloyal plans and practices of the conspirators*. The detail of this, taken in writing by James at the time it occurred, is too remarkable not to be set forth.

“He first threw himself at his Majesty’s feet, acknowledging his guilt, and the share he had in the conspiracy, and asked his pardon: then confessed himself faulty to the Duke, asked his pardon also; assured him, if he should survive his Majesty, that he would pay him all the duty that became a loyal subject, and be the first should draw his sword for

* Sprat, 189.

him, should there be occasion.* He then desired his Majesty would not oblige him to be a witness; and then gave an account of the whole conspiracy, naming all those concerned in it, which were more than those who had already been mentioned by the several witnesses.†

So far James's memorandum. Other authorities, in greater detail, say, with the King, that he confirmed the truth of Lord Howard's testimony, with the exception of one unimportant particular; named the chief persons on whom the conspirators depended in Cheshire, Yorkshire, and the West; and unfolded the designs of Argyle in Scotland.‡

What the King said, then, was true, and he *did* confirm what Howard had sworn.

Yet after this, having first waited till his pardon past, and fearing infamy, he denied it.

This falsehood excited the anger of his father, who, *at the suggestion* of Ormond, required from him a written contradiction of the report of the denial. He obeyed, but his letter was deemed evasive, and Charles gave him another form, written by himself. This

* This was in Nov. 1683. How well he kept his promise, when less than two years after he undertook his silly and wicked invasion of him, disputing his title to the crown, may be remembered. In truth Monmouth is the poorest character in history; yet being the enemy of James, Fox does what he can to whitewash him.

† Sprat, 136.

‡ Sprat, 136. Life of James, i. 742. James's Letter to Prince of Orange, 27th Nov., in Dalrymple, Appendix 53, and Reresby 168. All, apud Lingard, xiii. 350.

having copied and returned to the King, though with many a pang, is absolutely conclusive; and how Mr. Fox can say it is undeserving the smallest attention, he only can explain. The letter will speak for itself.

“ I have heard some reports of me, *as if I should have lessened the late plot, and gone about to discredit the evidence given against those who have died by justice.*” From this, then, it appears that he did not mean to lessen the plot, or discredit the evidence. But again : “ Your Majesty and the Duke know how ingenuously *I have owned the late conspiracy*; and though I was not conscious of any design against your Majesty’s life, yet I lament having had so great a share in *the other part of the said conspiracy.* Sir, I have taken the liberty to put this in writing for my own vindication, and I beseech you to look forward and endeavour to forget the faults you have forgiven me. I will take care never to commit any more against you, or come within the danger of being again misled from my duty, but make it the business of my life to deserve the pardon your Majesty hath granted to your dutiful
MONMOUTH.”*

Now here, it may be said, there are no particulars, and, what is more, that the letter is the dictation of the King.

As to the first, let those who have read all the trials, and Hampden’s confession, deny, if it be possible, whatever glosses are put upon it by Mr. Fox,

* Sprat, 141.

Lord John, or Sir James, that there had been no treason, whether legal or moral, not merely in contemplation, but in positive overt acts.

As to the last, that any difference can be made between signing at the dictation of another, and signing of one's own accord,—not only is the subterfuge a mean one, but the proof is enhanced by it. Nothing short of the most overwhelming self-conviction could induce a man of the commonest spirit to stoop to such degradation, if the fact confessed, though at another's dictation, was not true.

The reproaches of his friends, however, particularly of Hampden, who called this letter his death warrant, occasioned on the part of Monmouth the agony before mentioned, and the recall of this important document; as if the recall could alter the fact. Forbidden the court, and retired to the country, this very weak and foolish person, at the advice or entreaty of his duchess, now offered to recall his recall, retrace his steps, and sign a similar paper: but it was too late, and Charles rejected the proposal.*

Are these light circumstances? Are the communications nothing? Were the confessions inventions, to save his own life, by sacrificing his associates? That could not be, because the pardon had passed before this critical letter had been sent. Is this, then, what Mr. Fox means, by saying it deserved not the smallest attention? Perhaps Lord John Russell thought so too; for, remarkable as the communications were,

* See all the authorities for this, apud Lingard, xiii. 351, 352.

and bearing so pointedly upon the question of the conspiracy, though not of the assassination, he passes them over (perhaps wisely, for they pinch hard,) with this meagre notice: "The Duke of Monmouth was persuaded by Lord Halifax to make his confession. He did this in *a letter*, in very general terms; but being told that he might hurt Mr. Hampden, and others of his friends, he went to the King, and desired to have it back. The King gave him his letter, but accompanied it with some severe expressions, and forbade him the court." And this is all that is said upon this most important and detailed disclosure of the most remarkable event of the times, by the writer professedly the most interested in its history, in defence of an ancestor, upon whose real conduct in the cause depends much of the fame and consequence of his family.

The confession, general as it was, is made particular, by being at least a groundwork for all those details of evidence given in the various trials; evidence to discredit which we see is disclaimed in the very first lines of it; and, if we might be forgiven the liberty of the observation, Lord John should have therefore ransacked the world for every document in existence respecting it, before he dismissed it with so poor and hungry an account.

I do not mean by this, that it is possible to suppose an honourable person like Lord John, in professing to state an historical fact of such importance, could *mean* to suppress any part of it; but, after what

has been detailed, let any one say, whether he, or Mr. Fox, have, in what they have said of these important passages, fulfilled the whole duty of historians, — that is, not only not to hazard falsehood, but severely to examine truth. The alternative seems, (strange to say,) that neither of them could be aware of the extent of the authorities for this confession; or aware, have repudiated them.

This, indeed, in regard to some of them, Lord John has attempted; whether with success, the world must judge. It is, however, not a little remarkable, that the *two* authorities which he has selected for repudiation, are precisely those that most cogently support the confession of Monmouth, and bear hardest upon the case of Russell.

These are Lord Grey, and Sprat, Bishop of Rochester. “In the examination which I have made,” says Lord John, “into the truth of the Rye House Plot, I have placed no reliance on the authorities of Lord Grey and Bishop Sprat.” To be sure he would not!

As an advocate, like other advocates, bound to do the best for his client, and therefore to keep out of sight every thing that may condemn him, Lord John was no more than wise in this. As an historian, the wisdom, as well as the duty, of it may be questionable. He should at least have allowed his reader to examine the case as well as himself.

Of Bishop Sprat, he says, he “wrote, at the desire of Charles and James, a history of the Rye House Plot;

but after the Revolution he published two *exculpatory* letters to Lord Dorset, in which he says, James, after his accession, called for his papers; and having read them, and *altered* divers passages, caused them to be published by his own authority. Sprat also," adds Lord John, "*retracts* all that he had insinuated against Lord Russell's veracity. His authority must, *of course*, be equally disregarded with that of Lord Grey."*

To Lord Grey we shall presently come. Meantime, this is a very easy way of getting rid of a troublesome authority. But, with submission, much more ought to have been done by Lord John, who was well qualified to do it, before an unbiassed reader would be prepared to follow him. In the first place, it was due to Sprat to set forth these *exculpatory* letters to Lord Dorset at large, in order that the world might judge what was incontrovertible fact as to his delinquency; what mere opinion on the part of the naturally partial author. Not one word of these letters is set forth, except that James made some alterations in the papers, and then published them by his own authority; which might be explained, had the context been given.

What was the bitter and just complaint of Sidney, but that garbled extracts from his papers were given, though Jeffries offered to read what he pleased? Is Lord John less just than Jeffries?

The letters, however, are extant; and, for one, I

* Life of Russell, ii. 173, 174.

am far from coming to the conclusion, which Lord John evidently surmises, that either Sprat, or King James, recorded something wilfully false, or for which there was not sufficient warranty. With regard to King James, — covered as he is with abuse, — plunged from head to foot in error, — indefensible, arbitrary, hateful, bigoted, dark, unmerciful, — his bitterest enemies allow him honesty. In fact, with the exception of the foul and cowardly calumny as to the birth of his son, no one has ever attacked his veracity. On the contrary, even Mackintosh allows it as his almost only virtue; and, bold as it may appear to say so, in this virtue, as far as *undeviating* uniformity was concerned, he was not equalled by Lord Russell.

In this, however, I allude solely to Lord Russell's account of his own conduct on his trial. As to the meeting at Shepherd's he said, "I know little of the matter, *for it was the greatest accident in the world* I was there; and when I saw that company was there, I would have gone again."

I came there *accidentally* to speak to Mr. Shepherd.

Now, by his own after-confession, he *knew*, as we have seen, that company was to be there, and went expressly to meet them, though the rather because he also wanted to taste wine.*

Aware, therefore, that this was not so, and might appear disingenuous, he endeavours to explain it in

* State Trials, vi. 714.

his paper to the sheriffs, at his execution, wherein he he says, "I never said that was my *only* reason."

This, if I may use such expressions to such a man, was an equivocation. For though he did not say it, he evidently meant, and wished it to be so inferred.

Again, in regard to the Council of Six, whose communication with the Scotch malcontents, with a view to insurrection, is now incontrovertibly established, and Howard's testimony therefore supported, he said that the meeting was "only to talk of news, and talk of things in general."*

Now, we do not say that when a man is accused and tried for his life it is a proof of moral turpitude and general disregard of truth to give false glosses to his conduct. "*Dolus an Virtus*" in an enemy are the same; and Lord Russell being the enemy of the government, he might think he had a right to deceive the jury to preserve his life. But then why not avow it afterwards, when he professed to detail the exact truth, and all hope of escaping was over? The attempt to reconcile the subterfuge with truth, by observing that he never said that to taste wine was his *only* reason for being at Shepherd's, derogates from his probity, certainly from his heroism.

When on the scaffold, also, he denied all knowledge of the plot, not merely against the King's life, but the government; "an untruth," says Macpherson,

* State Trials, vi. 720. This is admirably supported by what we have extracted above from Carstair's confession.

“too palpable to have been uttered by a man deemed even by his enemies sincere;” and therefore he doubts charitably that the speech attributed to him was genuine. What seems insuperable now, as to his attempt to deceive the jury, the government, and, perhaps, the world, was the incredible assertion,—incredible after all that has been detailed as to the connection with Argyle, and his demands of money, arms, and horse for the purpose of invading Scotland, (for which I again refer to Carstairs’s examination)—that he “never desired any thing to be redressed but in a parliamentary and legal way.”*

Did either Sprat or James, then, as Lord John insinuates, falsify, or even misrepresent any one thing? I would say, no; but that the Bishop confesses that he was guilty of favouring the actors in the plot more, much more, than the numerous authentic documents placed before him from the Paper Office fairly warranted.

His words are remarkable. After complaining that some noble and eminent persons, whose friends or kindred were unhappily concerned, had entertained a prejudice against him, he says, “to them I

* “I was always for the government. I never desired any thing to be redressed but in a parliamentary and legal way. I have always been against all innovations and all irregularities whatsoever.” (Trial of Lord Russell.)

After this, is Sprat to be rejected as an authority, because he questioned the veracity of a man who so prevaricated, even though he might afterwards have changed his opinion as to his general probity? But every allowance in such a cause is to be made for Lord John.

shall make this equitable request, that they would suspend any farther censure of me for what I *did* write till they shall be fairly informed how much there is that I have *not* written."

He then says, that, though allowed to consult the Paper Office and council books, whence he was plentifully furnished with such authentic materials, either of papers printed by authority, or of sworn depositions and confessions, as have been always thought the best ground for an historian to work upon, yet he was more than twelve months before he could be brought to put pen to paper. Why? Because of his natural aversion to any business that might reflect severely upon any man. "My own inclination," says he, "farther leading me to the other extreme; that is, rather to commend too much what in the least seems well done, than to aggravate what is ill done by others." He adds, "during composing those collections I earnestly requested King Charles, that few or no names of persons should be mentioned, whatever probable suggestions might be against them, but only such upon whom public judgment had passed, which it could be to no purpose for me to conceal. I could, indeed, have wished that my Lord Russell's and some other names of persons of honour might have been of the number to be omitted, but it was none of my fault that they were not; I could not hinder, nor did I in the least contribute, to their fall; nay, I lamented it, especially my Lord Russell's, after I was fully convinced,

by discourse with the Reverend Dean of Canterbury, of that noble gentleman's great probity and constant abhorrence of falsehood; but that was a good while after."*

We suppose the last cited is the passage in which Lord John states, that the Bishop retracted (as he calls it) all that he had insinuated against Lord Russell's veracity.

This is by no means a just conclusion.

As to the authority, one might appeal to the whole of the above extract to show that if it is to be disregarded, it is when he favours Lord Russell, not when he inculpates him; and with regard to the retraction, (as it is called,) what does it amount to? That, in common with every impartial man who compared then, or compares now, what he himself said upon his trial, with his avowal afterwards to the sheriffs, and with the confessions of his colleagues, Monmouth and others, he noticed discrepancies between the two accounts, which did not leave his reputation unblemished, but which were balanced by his general love of truth, supported, *though a good while after*, by the authority of Tillotson. Now, if Sprat's insinuation against Lord Russell's veracity was founded upon the untruth proved by himself by what he said upon his trial, how does a better opinion of his general

* Letter to Lord Dorset, apud. Biog. Britt., article Sprat.

And this is the *exculpatory* letter relied upon by Lord John, to show that what he said against Lord Russell was such defamation, that his authority must be rejected. If rejected, it is clear it must be for veiling the guilt of Lord Russell, not exaggerating it.

probity and of his abhorrence of falsehood, generated *a long while after* by Tillotson's assurances, prove a retractation of this specific accusation? Even if these very general words of Sprat did amount to such a retractation, will that piece of candour (for it is not less) vitiate a whole work, or destroy our belief in the specific documents, copied from originals in existence at the time? If Lord John would beat down the authority of these, and really convict Sprat of forgery, or even of incorrectness, he would have consulted justice and his own object better by himself applying to the books and papers which the Bishop cites, than by this short, sweeping, and convenient condemnation.*

Then as to the alterations by James: was a syllable breathed against their honesty? on the contrary, from the sort of pious fraud which Sprat admits he practised in softening, not aggravating, guilt, the reason of the thing, added to James's own character for truth, would induce us to suppose that he only fairly corrected what the Bishop more than hints he unfairly suppressed.

For King Charles, says the Bishop, "having granted my desire of concealing certain names, according to this allowance I proceeded, leaving out some, and abbreviating others; endeavouring all

* Monmouth's letters, as we have seen, are set forth by Sprat. Does Lord John, after *searching*, say there are not, and never were, such letters, and that it is clear he forged them, because he changed his opinion of Lord Russell's veracity?

along to spare parties and families, and particular persons, as much as would be allowed. All which would be demonstrated from the copies of the depositions as they went out of my hands, where there were several names marked by my own hand to be left out in the publication. So that if some indifferent man should now compare the informations as they are in print with the originals in the Secretary's or Paper Office, he would, it may be, be apter to suspect me of *connivance*, than of *calumny*, on that side." *

Such then, again, is the *exculpatory* letter which is supposed so to invalidate the History of the Rye House Plot as to destroy its authority against the actors of it; whereas every line shows, that, whatever deficiency in point of truth may belong to that history, it is a deficiency in *favour* of the conspirators, not against them; by the author's own account, *connivance*, not *calumny*.

There is not the same demonstrably fair objection to a similar condemnation pronounced by Lord John on the narrative of Lord Grey. Sprat had forfeited nothing, certainly not a life, when he wrote his history, and therefore wrote not to save it, if Lord Grey did so. I put it hypothetically, because we have no proof (Lord John has not vouchsafed any) that this was *a condition* of the pardon of Lord Grey.

But Grey was stained with the private vices "of licentiousness, cowardice, falsehood, and ingrati-

* Letter to Lord Dorset, ap. Biog. Britt. art. Spratt.

tude. The seduction of his wife's sister was aggravated by duplicity to her parents, and barbarity to her." *

We do not defend Lord Grey. We think him a base and sensual man; but we do not necessarily, on that account, believe his evidence incredible when supported by so many other testimonies: and if he was false in his known nature, how came he to be of the Council of Six; or Monmouth to be so linked with him after he knew his falsehood? Grant his vices, even after his history, did they, or the damning sin of that history itself, prevent the Whigs from taking him to their bosom? He was created Earl of Tankerville by King William, spite of his supposed false testimony against Lord Russell, whose martyrdom professedly procured a dukedom for his family from the same Whig King. He was also placed in high trust by the party he is supposed thus to have so falsely betrayed, as to have destroyed, in Lord John's mind, the authority of his history. He was a Lord of the Treasury, and died Privy Seal. Do these circumstances weigh nothing to prove that his party, though they might be hurt by his narrative, could not *quite* believe it was false? Even Lord John forced to confess that "the story is well told, and probably has a *great mixture of truth*; but as it is impossible to separate the true from the false, it is better to neglect it altogether." †

* Life of Lord Russell.

† Id. ii. 173.

This is an excellent and commodious way of getting rid of an inconvenient witness ! But why neglect it altogether ? Why not attempt to sift the truth from the falsehood, as I am doing now ? But better it certainly is for the descendant and defender of Lord Russell, on whom the truth thus *greatly mixed* up in the narrative presses so hard. The noble Lord is too well experienced in books and forensic discussions for us to point out to him that if the authority of all books, particularly on political, and, above all, on party questions, in which some falsehood is mixed with much truth, were to be rejected, our libraries would be stript, and the labour of study shortened, if not completely spared.

What would become of almost all history ? What of most of the Whig resolutions of the House of Commons in the time of Charles II., in which Lord Russell himself took so violent a part ? What of the reports on the Popish Plot ? And, in particular, what of the gossipping Burnet ? * Should this maxim of Lord John prevail, that where there is truth and falsehood mixed, both should be rejected.

Thus much, then, for the confessions of Monmouth in regard to the reality of the Rye House Plot ; by which expression I always mean the design of rising in arms, to produce by force an alteration in the measures of government, which goes by that name, and not necessarily (though not excluding it)

* Lord Dartmouth used to call his History the Bishop's Story Book.

the separate, or, if I may so call it, the insulated design of assassinating the King. Such a rising would be undoubted treason if carried into effect: and to the question, whether only to intend it, is an overt act designing the King's death, in other words, the question of *constructive* treason, we shall presently come. But the fact of the contemplation of such a rising is, at present, still the question before us, whether with or without the adjunct of the design at the Rye House; and, from what has preceded, this confession of Monmouth was not necessary to establish Lord Russell's participation in it, any more than Lord Grey's confession afterwards, in his evidence on Lord Delamere's trial in January 1686. There he unequivocally stated, that the conduct of the different designed risings was assigned to different chiefs, — London to Shaftsbury, Cheshire to Monmouth, and the west to Russell. Of the ripe state of Cheshire, Monmouth indeed, according to him, made a regular report in form. Couple all this with all the documents in Sprat; with the avowals in Burnet; the depositions of the clouds of witnesses on the various trials, some perjured, many not; the confessions of many who were executed; the same facts (no matter to *the point in question*, by what means,) established in Scotland; and, in particular, the mission to bring up the men of absolute *confidence* from that country; the consequent journey of Baillie, and his refusal, in London, to deny that there were no communications with English lords

on the design for insurrection; and, in Scotland, to purge himself by oath from any knowledge of the Rye House Plot. Do this; and let any one then say, that *all* these varying circumstances, *all* these coincidences of testimony, multiplied at home and abroad, (however *some* of them may differ, or even be falsified,) are absolute inventions, concerted among the multitude of the parties that appeared on the scene, and that there was no reality in the plot for which Lord Russell suffered. Let any one do and say this, if he can.

Lord John has an express chapter on this reality*, in which, as we have noticed, he has excluded the particulars of the confession of Monmouth, the testimony of Grey, and the authority of Sprat. Just all the most pointed and pressing parts of the evidence, without the smallest attempt to examine them.† He states many horrors in the proceedings against the criminals, particularly in Scotland; he holds up much to *just* detestation; and he complains, with truth, of many breaches of the law in the course of process; but he nowhere, in our opinion, disproves the fact of the *design* to rise, or even, in some, to assassinate; nor, with regard to the first, the various overt acts indicating that design. He indeed, as he has a right

* Chap. 19.

† "The part of Hamlet to be necessarily omitted." This allusion does not perhaps become the gravity of an historical inquiry. But as Mr. Fox, in a still more dignified history, does not disdain to liken the Doctors of Oxford to Dogberry and Verges, I trust I may be forgiven.

to do, if he pleases, asserts his opinion, rather more confidently, I think, than Mr. Fox, that there never was any thing more than what Lady Russell said it was, a talk about these things. How that is to be reconciled with all the foregoing particulars, it must be left to the world to judge. No one can blame Lord John for making the attempt: his abilities I am not the man to undervalue; and if he has failed, it is because it was *impossible* he should succeed.

But here a parting question arises, in which, for a moment, we wish to indulge.

If Lord Russell, by his treason against the law of the land, was only the more faithful and devoted to the paramount laws of nature and reason; if he was the great and heroic patriot who sacrificed his life in attempting to deliver his country from oppression; why not avow, proclaim it, glory in it? Why deprive him, or allow him to deprive himself, of the honour that belongs to him? As it was, he entangled himself in irreconcilable assertions, to escape, first, conviction, and then punishment. Hence, his whole virtue as a patriot, a righter of wrongs, an assertor of the natural and inalienable privileges of the people, is frittered into nothing, by attempts at denial of his real conduct. So also his friends for him, both at the time, and now. Not a step do they stir, not an argument do they offer, not a testimony do they undermine, in order to disguise his legal guilt, but derogates from his public virtue. Thus, his self-devotion is extinguished in insur-

mountable difficulties, rash assertions, and disingenuous conjectures; all which might be avoided, and his moral fame exalted to that really high pitch which these abortive prejudices in vain endeavour to carry it.

Such, it appears to me, is the effect of the attempts (honest though they may be) to mystify his case. If he really meant to rebel in what he thought a holy cause, why all this jealousy, this extreme questioning of glaring facts? If not; if he did not like, as Burnet says, this mad exposing of himself, what becomes of his martyrdom?

One great mistake (at least if we are right ourselves,) seems to pervade the whole of the reasoning on the law of the case, both by Mr. Fox and Lord John Russell,—that a mere *consultation* about treasonable measures, if they are not carried into effect, is not treason in itself.

In this, if the *animus* is fully proved, we venture to say they are wrong. It is this animus which is to decide; for so sacred, for wise reasons, is the royal life, that merely to *intend* the destruction of the King, could it be discovered, is treason, although no step be taken towards it. The difficulty is *how* to discover it, and hence the necessity of an overt act. Dionysius held that a dream was sufficient, and put a man to death for it. The law of England does not say so; but this it does say, that in treason the rule of *voluntas pro facto* is retained in the statute of treasons itself, that second Magna Charta

in defence of the subject. “Non meus hic sermo est,” but of a most accomplished and accurate lawyer and judge; not, indeed, so accomplished or so learned in the law of treasons as Mr. Fox, who, as we have seen, in Lord John’s opinion, is not “easily matched by *any* lawyer;”* but still of a judge and a writer whose authority (in the courts at least) no lawyer ventures to dispute. I mean Mr. Justice Foster, whose opinion Lord John will now permit me to submit to him.

“In regard to treason,” he says, “it (the law) considereth the wicked imaginations of the heart in the same degree of guilt as if carried into actual execution, *from the moment measures appear to have been taken to render them effectual.* And, therefore, if conspirators meet and *consult* how to kill the King, though they do not then fall upon any scheme for that purpose, this is an overt act of compassing his death; and so are all means made use of, be it advice, persuasions, or command, to incite or encourage others to commit the fact, or join in the attempt; and every person, who but assenteth to any overtures for that purpose, will be involved in the same guilt.

“The care the law hath taken for the personal safety of the King is not confined to actions or attempts of the more flagitious kind,—to assassination or poison, or other attempts directly and immediately aiming at his life.

* Life of Lord Russell, ii. 65.

“It is extended to every thing wilfully and deliberately done, or attempted, WHEREBY HIS LIFE MAY BE ENDANGERED. And, therefore, the *entering into measures* for deposing or imprisoning him, or to get his person into the power of the conspirators,—these offences are *overt acts* of treason within this breach of the statute.

“For experience has shown, that between the prisons and the graves of princes the distance is very small.” *

Here, then, we may rest the law of the case as far as it regards the meetings at Shepherd’s, the Council of Six, the sending to Scotland for men of absolute confidence, who came up in consequence, and upon the correspondence with Argyle on a demand of money and arms.

Here, we say, we may rest the law, although it is admitted no money was sent, no arms bought†, no insurrection actually levied, and thus we think the moral *intention* of Lord Russell to remedy grievances by a force put upon the King, though not by assassination, is fully proved. Even Mr. Hallam goes far towards this. “It is beyond doubt, he says,” “that the supposed conspirators had debated among themselves the *subject of an insurrection, and poised the chances of civil war.*” But he adds, “thus much the most jealous lawyer, I presume, will allow might be done without risking the penalties of treason.” ‡

* Foster’s Crown Law, 194.

† That is not certain.

‡ Constitut. History, ii. 206.

I do not know. Without being a very jealous lawyer, I, and probably Mr. Hallam himself, would start if we saw an advertisement in the papers, signed, we will suppose, by Lord Melbourne, Lord Cottenham, Lord John, Lord Hill, and Lord Minto, the representatives of the treasure, law, police, army, and navy of the kingdom, and calling upon their fellow countrymen to meet, (say at the Crown and Anchor,) to debate the subject of an insurrection against the Queen, and to poise the chances of civil war! We should doubt a little, I think, the safety of their heads.

In Lord Russell's case, however, Hallam allows the *supposed* conspirators had gone farther, and concerted measures in different places, as well as in Scotland, for a rising, though *contingently*.

"There is a considerable difficulty," he says, "in stating the extent of their designs, but I think we may assume that a *wide spreading and formidable* insurrection was for several months in *agitation*: but the difficulties and hazards made them *recede*."*

Will this excuse them, or show that no treason was intended?

We are alive, however, to an objection to the establishment of the legal guilt of Lord Russell, which is made by his advocates, to which, as well as the legal proofs of it, we will now address ourselves.

Whatever has been held (says the argument) of treason's attaching, in certain circumstances, to mere

* Constitut. History, iii. p. 207.

consultations, it is answered, that these consultations must relate to the conspiring the *actual death* of the King, and not the mere raising an insurrection, or levying war; and that to establish the guilt of this, the war must be actually levied.

In the passage quoted from Mr. Justice Foster this is not what is held. For his words, as we have seen, are, that the law is not confined to attempts *immediately aiming at the life of the King*, but “is extended to every thing wilfully and deliberately done or attempted whereby his life *may be endangered*.” But as war against a king must endanger his life, or it is no war, the plain sense of the thing, it should seem, demonstrates at once, that to conspire the one is the same as to conspire the other.

Mr. Fox, however, says no; and Mr. Fox’s authority is held by Lord John, “not easily to be matched by *any* lawyer.”

We are bound, therefore, to enter into this great question of constructive treason, in which Mr. Fox, and an act of parliament (not declaring or altering the law, but) reversing a particular attainder, are against us: the whole stream of law authorities, the maxims, decisions, and treatises of judges, for us.

In the treatise of Mr. Justice Foster, just cited, the point is laid down without a doubt. It is expressly stated, “that to *enter into measures* for imprisoning or deposing the King, or getting his person into our power, are *overt acts* within the breach of the statute,” that is, of conspiring the King’s death.

Well; is or is not a war against a king liable to these consequences? If he resist the war, and come with troops to give you battle, will you not fight him? If not, what becomes of your war? Cromwell said if he met the King in battle, he would as soon fire his pistol at him as any other man; and if Cromwell was right in his war, he was right as to his pistol. Lord Russell might not have fired his pistol, if he could help it, but he meant to have one to fire, and who is to say, if once in battle, that he could help it or not? Did he mean that, though he sought reform by arms, he was not to use them?

Besides, who is to answer for Lord Russell's confederates, whom *he* would have contributed to place in battle against their sovereign? In short, if a man organizes or encourages a conflict, is he not answerable both in law and reason for the consequences, even though he personally do not join in it?

So much for the reason of the thing. Now for the law.

I have said that the stream of the authorities was with us, and so they are, from the hour that gave birth to the statute, which it is said was so much invaded, to the present day.

But Mr. Fox and Lord John say, this is judges' law, and not the law of the land. Where does he find that the decisions of the judges, uniform, repeated, respected, and obeyed, are not the law of the land?

Where are we to look for that law but in these decisions?

In common law we have nothing else. In statute, the interpretation can only be in *them*. The moment any other power or person interferes, security is gone, and the constitution is overturned.

Mr. Fox may be a better lawyer than Lord Hale or Lord Holt, or Coke himself, or Sir Vicary Gibbs, but his law is not the law of the land: their's is. A single judge, indeed, may be wrong; or a whole court in error on a single case. But there is power by the same law which gave them the right to judge, to revise the judgment, and correct the error. Even if all judges at all times concur upon a point which from either policy or justice ought to be altered, there is the known remedy in the legislature.

In the instance before us was this ever administered? was it ever attempted?

If Mr. Fox is right, or Lord John is right, as to constructive treason, why have they not altered the law?

Both, probably, had power to do it, and the home secretary has it still. Will he now make the attempt, and argue it, in or out of parliament, with the judges? If not, he ought not to condemn them.

It is really strange that such rashness of opinion has been hazarded upon the mere ipse dixit of either of these honourable persons, without an authority quoted to bring the matter into doubt, and all authority (judicial at least, for I admit not mere private speculations,) against them.

Of these private speculations I have read the two

thought most worthy: the defence of Lord Russell's innocence by Sir Robert Atkyns; and remarks upon his trial by Sir John Hawles.

Neither of them produce, I will not say conviction, but any thing that is not produced, and attempted to be answered, in this commentary. I except, however, one argument by the first-mentioned, from which you may gather the character of much of the rest, which, in truth, seems more to be that of the syllabarum auceps, formularum cantor, than of one who manfully grapples with difficulties which he feels he can overcome. As a proof, take what he says of the guards.

Because that description of force, by name, is not noticed or recognized in any law-book, therefore, to conspire to seize them, without a better description, does not come within the purview of treason. Miserable, disgraceful, special pleading, which Lord Russell himself would have disdained, or he does not deserve his reputation.

Lord Russell, on his trial, had the full benefit of his objections to the law. He thought, as Mr. Fox seemed to think, that he was indicted on the 13 Car. II., which had expired. That act, which was temporary, made, for a time, a *conspiracy* to levy war, treason; which was not so before, and was now no longer in force.

He was answered, that he was not indicted for conspiracy to levy war, and therefore *not* upon that act, but upon the 25 Edward III. itself, for conspiring the

death of the King, of which the conspiracy to levy war *was only the overt act*. The whole case was reduced to this: the answer was unanswerable, and the error of Mr. Fox in not seeing it, is extraordinary.

Lord Russell applied for counsel to argue his objection, and was told, with no harshness, (for the whole court seemed to commiserate him,) that he should certainly have them, but must first admit the fact, without which it would be needless.

This he did not, or would not do: the *fact* was found against him by the jury, the judgment was not arrested, and he suffered.

There never was a greater error in history than that Lord Russell was not fairly tried. Even the objection for want of freeholders, which was said to be a violation of law, was coolly, calmly, and learnedly argued. For that point counsel *were* assigned him, among them Pollexfen and Holt, both Whigs, and they had every attention from the bench.

Pollexfen, the leader, was asked by the Chief Justice, whether he could find any judgment, that, in cases of treason by the common law, they might except for want of freehold? To which he answered, no. Then the whole argument was at an end, for the right to be tried by freeholders was only given by a statute of Hen.V., and that statute was repealed by one of Mary. Lord John, indeed, discovers above a hundred years afterwards, what it escaped all the writers and all the lawyers to discover on arguing the point, that the act of 1st Mary merely repeals

all laws creating treasons since Ed. III., and *does not at all interfere with the mode of trial, and therefore* Lord Russell was not legally tried. * Is it not remarkable that the able counsel I have named did not make this rejoinder to the argument of the Chief Justice?

If the act says so in terms, why not state it? If only an implication of Lord John, we must have a care that we are not entangled in *statesmen's* law, which would, *perhaps*, (I put it humbly,) be worse than judges.

But what are the words of the Chief Justice?

“The statute of Queen Mary comes and says all *trials* shall be by such evidence, and *in such manner*, as by common law they ought to have been.” †

It therefore returned to the common law, as well in the mode of trial, as the law itself.

But, is it not a pity that this cogent objection, if founded, should have escaped Sir John Hawles, exhausting argument, and abuse too, upon this very decision?

He was splenetic enough, and seized many weaker objections. Among others, one is to the *many* and *variety* of reasons given by the judges on disallowing the challenge.

“The assigning many reasons,” says he, “for one and the same thing, makes the judgment *justly* suspected.”

I should have humbly thought the reverse; but with such a disposition to quarrel with the decision,

* Life of Lord Russell, ii, 63.

† State Trials, v. 711.

is it not astonishing that he did not hit upon this discovery of Lord John?

Even *he* allows that the only reason for requiring freeholds, before the condition of tradesmen became so respectable from wealth, was, that there might be men of sufficient substance on the jury; but he owns that “now, and *for some time* past, the value of trade is equal to that of land.”*

He, therefore, though against his will, supports the reason, without impugning the law of the Chief Justice.

After every attention, then, to the counsel, and every advantage to the prisoner, from fair play to the argument, the court were unanimous in overruling the objection. Yet the act of William, reversing the attainder, states this failure of freeholders as a principal ground for it, because contrary to law. If so, where was the necessity for enacting it anew? For the present right to be tried by freeholders in treason, is derived, not from the common law, nor the act of Hen. V., nor the act of Mary, but from the express enactment of the Bill of Rights. But the act reversing the attainder says the verdict was vitiated. Must it not, *therefore*, be true? The vote, by the same authority, found, that the throne was vacant, with half a dozen lawful heirs standing around it. Was that also true?

Without better reasons than were assigned for either of these votes, we take the liberty of not believing either one or the other.

* State Trials, vi. 187.

All experience shows that large assemblies, particularly political ones, whatever the condition or education of their members, partake of the nature of mobs; and are often governed and blinded by the same heat and passion. After the passion is worn away by time, the cooler judgment of the closet busies itself with the truth alone.

Still Lord Russell is said by certain classes, most of whom take it upon trust, to have been a victim, and his death, as the statute of reversal (unjustly, we think,) calls it, a murder; because condemned for *constructive* treason.

This may justify Mr. Fox for *repeating* the opinion: the soundness of the opinion it will not prove.

It is remarkable that upon this subject Tillotson became a lawyer as well as Fox, only with this difference, suitable to their professions, that Fox, being a statesman, published his opinion in a state history addressed to the world; Tillotson, a clergyman, in prayers addressed to the Almighty. In a prayer written for Lady Russell on her loss of sight, he reasons with, though he submits to his Maker, on the case of Lord Russell, whom, he says, “Thou in thy holy and righteous Providence permitted, *under a colour of law and justice*, to be *unjustly* cut off from the land of the living.”*

We shall treat farther of this supposed violation of the law of treason; but meantime was this grounded upon any thing in the composition of the court?

* Birch found a copy of this in short-hand in the Archbishop's common-place book.—Biog. Britt., article Tillotson.

Was Pemberton, who tried him, charged or chargeable with the least unfairness? Take what was said of him by a man who knew his profession and its history as well as most; take Sir Vicary Gibbs, himself afterwards a most correct judge, and at that time arguing for prisoners tried for this very constructive treason, if it be correct to call it so, and not a mere overt act.

“ Lord Russell,” says Mr. Gibbs, “ was tried before my Lord Chief Justice Pemberton,—as wise, as learned, and as able a judge as ever adorned the bench.” *

In 1794, Hardy and Horne Tooke were *indicted* for compassing the King’s death.

What was the overt act by which it was to be proved? Compassing by force to dethrone the King! Precisely what is called, by Fox and Lord John, the *constructive* treason of Lord Russell.

It is not, however, my intention to swell this commentary, already too long, by going into the argument upon constructive treason in the abstract. But I will do better, for the purpose of this inquiry. I deny the whole fact of the existence of constructive treason at all; and venture to assert, that since the statute of Mary, which brought back treason to that of Edward, there has been no such thing in the annals of law. Though promulged, therefore, by the legislature, and echoed by Mr. Fox, Lord Russell was neither indicted nor condemned for constructive treason. Nay, he was explicitly told so by the court, when he

* Tooke’s Trial, ii. 175.

took the objection; and lest there should be a possibility of a mistake, the jury were told so too.

This may appear startling to some. For how many thousands who follow this opinion, and argue upon it, both in public and in private, never read the trial?

To be short, and to avoid every thing like subtlety, he was not indicted for conspiring to levy war, but for compassing the King's death; *of which the consultations, or conspiring to levy war, were made the overt acts*, not the substantive treason.

If this was so, the whole declamation and high-sounding complaints of the stretching the law to make a victim; nay, the solemn language of the legislature itself, when it assigned the fact as a ground for reversing the attainder; is false, and falls to pieces, vanishing like a dream.

That it was so, hear better authority than mine, as I most appositely find it, in the celebrated defence of Hardy, *said* to be, like Lord Russell, tried on constructive treason, in 1794.

Two of the greatest ornaments of the bar were his counsel,—the one for eloquence, the other for knowledge,—Mr. Erskine and Sir Vicary Gibbs. I shall advert to them both; but as Sir Vicary made a direct statement of the real case of Lord Russell, and goes distinctly into the doctrine upon it, by availing myself of his language and opinion, I gladly avoid the intrusion of my own.

Hardy, like Russell, was indicted for compassing

the King's death, and not for conspiring to levy war ; and, like Russell's, his overt act was an imputed conspiracy to produce rebellion in the kingdom. The jury, in the one case, believed the evidence offered for the overt act ; in the other, they rejected it. As to the law in regard to the treason, they were both indicted on the same statute (25 Edw. 3.) ; and the whole contest turned upon the evidence, for the law seemed undisputed. Upon the last, hear Sir Vicary's own words to the jury.

“ I will trouble you farther, merely with a statement of the way in which judges, who have had to try causes upon this statute, have laid down the law to the jury. I shall then have stated to you the indictment,—the statute upon which it is founded,—the construction of one of the most learned lawyers who ever lived upon that statute, — and the acting of one of the most learned judges who has ever adorned the bench, (I speak of Lord Chief Justice Pemberton,) when he sat on the trial of Lord Russell, who was charged with an offence of the same sort as that with which the prisoner at the bar now stands charged.

“ The doctrine contained in that trial is, I suppose, law, because I have heard the trial alluded to in court, and not from the bar, but from the bench. I have heard the summing up of Lord Chief Justice Pemberton, who tried Lord Russell, alluded to, as containing the law of the land upon the subject of treason.

“ My Lord Russell was tried upon this statute ; and the indictment charged him with compassing the King’s death ; the overt act was, that ‘ to fulfil and perfect the said most horrible treason and traitorous compassings, imaginations, and purposes foresaid, he, the said William Russell, together with other false traitors, maliciously, traitorously, and advisedly between themselves, and with divers other traitors to the jurors unknown, did meet together, consult, agree, and conclude insurrection and rebellion against our Sovereign Lord the King, within this kingdom of England, to move and stir up, and the guards for the preservation of the person of our said Lord the King to seize and destroy, against the duty of his allegiance.’ ”

“ So you see,” continues Mr. Gibbs, “ the charge in that indictment was that Lord Russell had *compassed the King’s death*, and, to effect that treason, had *conspired to raise insurrection* and rebellion against the King, and to seize the guards appointed for the preservation of the King’s person.

“ The evidence given in that case went certainly to show, if it went to show any thing, that Lord Russell had conspired to raise insurrection and rebellion in the kingdom, and to seize the King’s guards ; and yet Lord Chief Justice Pemberton, in summing-up, (I state this to show what is the matter for you to inquire into in this case,) does not tell the jury that the point for them to consider is, whether the prisoner had conspired to raise insurrection and rebel-

lion against the person of the King, and, if they found that, they must find the prisoner guilty; but he tells them this:—‘Now the question before you will be, whether upon this whole matter you do believe, not that Lord Russell had raised insurrection and rebellion against the King, but whether you do believe my Lord Russell had any design upon the King’s life, to destroy the King, or take away his life.’ That is the charge which my Lord Chief Justice Pemberton gives to the jury who tried Lord Russell, and no man ever complained that the trial of Lord Russell was not sufficiently severe: that,” he says, “is the material part here; it is used and given you by the King’s counsel as an *evidence of this*, that he did conspire to raise an insurrection, and to cause a rising of the people, to make, as it were, a rebellion within the nation, and to surprise the King’s guards, which they say *can have no other end but to seize and destroy the King*.

“So that Lord Chief Justice Pemberton puts it to the jury, that though they believed these facts, yet from these facts they were to collect whether the prisoner had, or had not, a design upon the King’s life; for if he had not, they could not find him guilty. If that had not been his opinion of the law upon this subject he would not have put it to them to say whether Lord Russell by this means meant to accomplish the King’s death; but would have put it,—*do you believe he conspired to raise an insurrection and rebellion against the person of the King?* if you be-

lieve that, you believe enough. He does not say that : he says, they put this to you as an *evidence that he meant to seize and destroy the King* ; and he goes on to say, ‘ it is a great evidence,’—but it is *only* an evidence—(if my Lord Russell did design to seize the King’s guards, and make an insurrection in the kingdom,) of a design to surprise the King’s person. *It must be left to you upon the whole matter.* You have not evidence in this case as there was in the other matter that was tried in the morning, or yesterday, against the conspirators to kill the King at the Rye.”*

Such was the opinion of, if not the best, at least one of the very best common lawyers of modern times, on the law of the case of Lord Russell, delivered while standing forward in defence of a prisoner, tried precisely on a similar indictment. May I be forgiven by Lord John if I think this lawyer equal in knowledge of the law even to Lord John and Mr. Fox themselves? We see, that in Lord Russell’s case, he cannot quarrel even with the verdict of the jury as to the fact, still less with the law as laid down by the judges. One of those judges was Sir George Treby, afterwards, in far purer times, Chief Justice of the Common Pleas ; a warm Whig, and strenuous promoter of the Revolution. It fell to this Whig judge (and so far surely no enemy to Lord Russell,) to pass the sentence on him, in which he told him his quality was great, but so was his crime. Need

* Hardy’s Trial, iv. p. 94.

he have said this to one of his own party had he doubted the justice of the awful sentence he was about to pronounce?

Of the other judge, Sir Francis Pemberton, who presided at the trial, we have mentioned the eulogy by Sir Vicary, both here, and on the trial of Horne Tooke*, as a man for "wisdom, learning, and ability not to be exceeded."

His charge to the jury was fairness itself; and he particularly cautioned them, that his case was not the same as that of the men who had been tried for the Rye House Plot, properly so called, for conspiring to assassinate the King.

He confined the proof of the guilt, about which they were to inquire, solely to the design of insurrection; and he confined that guilt solely to the charge of compassing the King's death.

The whole supports the candid opinion of Hallam, that upon his summing-up the jury might have acquitted Lord Russell.

Lord John, however, without adverting to any part of this internal evidence of his fairness on the trial, (the only evidence he could justly advert to on the question,) thinks proper to transcribe some *unproved* accusations of turpitude against Sir Francis, to be found in an author, North, branded by many, and particularly by Whigs, as of doubtful authority, and full of slander. But, *granting* the fact, will that

* Supra.

do away any particle of what has been said of his fairness to Lord Russell?

On the trial of Hardy, Mr. Erskine did not enter so particularly as his colleague Mr. Gibbs into Lord Russell's case; but as his acknowledgments of the law were precisely the same, we will succinctly mark them in support of our opinion; for they amply prove his persuasion, that a conspiracy to rebel may be *evidence*, and therefore an *overt act* of legal (*not constructive*) treason, though not the treason itself. I request the reader, and particularly Lord John, to mark the following passages.

“The act of *conspiring to depose* the King may, indeed, be evidence, *according to circumstances*, of an intention to destroy his natural existence.”

What more was done on Lord Russell's trial?

“The compassing the King's death is the treason, and *not the overt acts*, which are only laid as manifestations of the traitorous intention, or, in other words, as evidence *competent* to be left to a jury to prove it; and no conspiracy to levy war against the King, nor any conspiracy against his regal capacity, is a good overt act of compassing, *unless some force be exerted, OR IN CONTEMPLATION*, against the King's person; and that such force so exerted, *OR IN CONTEMPLATION*, is not *substantively* the treason of compassing, *but competent, in point of law, to establish it, if the jury, by the verdict of guilty, draw that conclusion of fact, from the evidence of the overt act.*”

Here, again, we ask, what more was done, or other law held, on Lord Russell's trial?

Again. "The charge of a conspiracy to depose the King is therefore laid before you *to establish that intention; its competency to be laid before you for that purpose is not disputed.* I am not contending that, under circumstances, a conspiracy to depose the King, and to annihilate his regal capacity, *may not be strong and satisfactory evidence of the intention to destroy his life.*"

In another place: "I do not mean to say that a conspiracy to levy war may not in many instances be laid as an overt act of compassing the King's death, because the war may *mediately* or immediately be pointed distinctly to his destruction or captivity; and, as Lord Hale truly says, 'small is the distance between the prisons and the graves of princes.'"

Thus, Mr. Erskine, as well as all the other lawyers we have cited, allows that a *design* to levy war *may* be an overt act of compassing the King's death, and this overt act must be left to the jury to decide upon. What more or less was practised in Lord Russell's case? But Erskine must be wrong; for the act of reversal says he was murdered, and Mr. Fox says he was murdered,—and Lord John, and Mackintosh, and all Whigs say he was murdered by constructive treason, and Lord John says it is not easy for *any* lawyer to match Mr. Fox on a point of law.

Probably, the passages that have been cited from Mr. Erskine may be thought enough. But there

are more, and, perhaps, more weighty ones; because they contain the doctrines of the greatest judges, to which Mr. Erskine implicitly bows. The first, Lord Coke's, who says expressly, that "*a preparation to depose the King, and to take the King by force and strong hand, until he has yielded to certain demands, is a sufficient overt act to prove the compassing of the King's death.*" "He does not say, as a *proposition of law*," observes Mr. Erskine, "that he who prepares to seize the King, compasseth his death; but that a *preparation* to seize him is a sufficient *overt act* to prove the compassing; and he directly gives the reason,—'because of the strong tendency it has to that end.' This latter sentence," continues Mr. Erskine, "destroys all ambiguity. I agree, perfectly, with Lord Coke, and *I think every judge would so decide, upon the general principles of law and evidence, without any resort to his authority for it.*"

Mr. Fox, therefore, and Mr. Erskine, both of them eminent Whigs, are here at issue upon a point which it therefore becomes not us to decide.

The next judicial authority with Mr. Erskine, is Lord Hale. "If men *conspire* to imprison the King by force and a strong hand until he has yielded to certain demands, and for that purpose *gather company, or write letters**, that is an overt act to prove the compassing the King's death, as it was held in Lord Cobham's case by *all* the judges."

Now, if this was what our great *political* jurists call

* Lord Russell did both.

judges' law, and not the law of the land, why (as we have asked before) did not the legislature interfere and correct it?

Mr. Erskine goes on to quote Lord Holt; and Lord Holt, as every body knows, was a firm Whig, a learned lawyer, and an incorruptible judge. He tried Sir John Friend, who took precisely the same objection to his indictment as Lord Russell; that it was for *conspiring* to levy war, which was not treason, though the actual levying it was. To this Holt answers, "For that, I must tell you that if there be only a conspiracy to levy war, it is not treason.* But if the design and conspiracy be either to kill the King, or to depose or imprison him, or put any force or restraint upon him, and the way of effecting these purposes is by levying war, there the *conspiracy and consultation to levy war* for that purpose is high treason, *though no war be levied*; for such consultation and conspiracy is an *overt* act of proving the compassing the death of the King."

Mr. Erskine contented himself with this extract from the clear charge of the Chief Justice; and a powerful one it is. I subjoin the rest of the charge, because, if possible, it renders it still more powerful, and the rather, because this, and the decision of the same great, enlightened, and honest judge in Ashton's case, are the last cases with which I shall trouble the reader.

* He said this most properly, because there may be called in law a levying of war which is not treason, but a great riot or tumult against the peace, as to pull down inclosures, &c.

In Friend's case, Lord Holt goes on to say, "Now that this should not be high treason if a war be not actually levied, is a very *strange* doctrine, and *the contrary has always been held to be law.*" What say the statesmen lawyers to this? "There may be a war levied without any design upon the King's person, which, if levied, will be treason; but a bare designing to levy war, without more, will not be treason. But if there be, as I told you, a purpose and design to destroy the King, and to depose him from his throne, or to restrain him, or have any power over him, which is proposed or designed to be effected by the war that *is to be* levied, such a conspiracy and *consultation* to levy war, for the bringing this to pass, is an overt act of *high treason*. So that, gentlemen, as to that objection which he makes in point of law, it is of no force if *there be evidence sufficient to convince you* that he did *conspire* to levy war for such an end."

So much for Holt's opinion, and I ask if any language can be more precise, (I had almost said *so precise*,) to prove that to *conspire* to levy war, though not treason, is yet an *overt act* of what is, viz. the compassing the King's death, *to be left to the jury to decide.*

This decision in Friend's case is no more than a repetition of what the same judge ruled on the trial of Ashton. There the prisoner took the same objection, that he had not *done* the act he contemplated, and there the judge gave the same answer.

"Mr. Ashton, that you may not go away with a mistake, any that designed the deposition of the King

and Queen, and the invasion of the kingdom, which is proved by any overt act, is sufficient to prove that they compass and imagine the death of the King and Queen."

Mr. Ashton. "I presume it may be so: I believe that may be the construction of the law."*

Such, then, were the decisions of this correct judge, in which, too, he had the concurrence of the Whig Pollexfen, now become Chief Justice of the Common Pleas, as a reward for his services in the Revolution, and who had been the leading counsel for Lord Russell. Nor is it least remarkable, that these two causes of Friend and Ashton (who, if the legislature were right in calling the judgment on Lord Russell a murder, were themselves murdered,) were the first cases of treason that occurred under that very King and that very legislature who stamped the character of murder on the case of Russell.

What now becomes of the law authority of Mr. Fox upon the case before us? What of his assertion, that, *even under the most constrained construction* of the statute of Edward III., Russell and Sydney had committed no overt act indicating the imagining the King's death, and that the condemnation was a most flagrant violation of law and justice? † Blown to atoms, unless Lord John persist in his own promulgated opinions, that Mr. Fox is scarcely to be matched by any lawyer; and not only persist in, but prove it. That task will not be a slight one after the names I have cited, of Coke, Hale, Holt, Foster,

* State Trials, vi. p. 475.

† Fox, p. 51.

Eyre, who tried Hardy, and Erskine and Gibbs, who defended him. I do not touch upon the arguments of the crown lawyers who conducted that prosecution, because they *were* crown lawyers, and Lord John would probably reject their authority on that account, though now Secretary of State. But as he *is* Secretary of State, and for the Home Department, and must at least occasionally think it right to consult them, I mean no disrespect to his abilities in supposing that if, during his official power, designs to force the Queen, or the government, by *arms*, to measures they chose to resist, should break out (which God forefend!) he will candidly review, perhaps alter, his opinion.

It perhaps may be a question, how the defenders of Hardy came so fully to admit a doctrine which seemed to press so hardly on their client; and why they did not, like Lord Russell and Friend, plead, that he was tried, as Mr. Fox wrongfully said Russell was, upon *constructive* treason?

It was because they knew better. The indictment stared them in the face, as it might have done by Lord Russell, to show that he was tried upon the letter of the act, viz. for compassing the King's death, and not upon a construction of its meaning. They, therefore, were forced to admit the law, in order the better to show how entirely the conspiracy to levy war was left by all the judges in all the cases, but eminently in Russell's case, as a mere overt act for the jury, not the court, to decide.

The whole notion, therefore, of constructive trea-

son is fallacious. Neither in Lord Russell's, nor in any case, has it been even discussed as a matter of *law*.

How evidence may be construed, is another affair; but that is matter for the jury; and if a judge there interfere, and declare what is illegal evidence to be legal, as was done in Sidney's case, the verdict will be vitiated. But will any man say this was done on the trial of Russell? Again, I refer to Sir Vicary Gibbs's account of the fairness of the charge to the jury; and to Hallam, the admirer of Russell, who tells you, that on that charge he might have been acquitted.

The same writer says upon it, that in Ashton's case, just quoted, Holt had settled the point for ever.*

One thing remains, without which this disquisition might be deemed incomplete, the *competency* of the witnesses against Lord Russell, in point of law.

I say competency, because, with their *credibility*, unless the law was strained in their favour, (as, for example, if they stood *convicted* of perjury or felony, and yet were admitted,) we have little to do; that question was exclusively for the jury, who determined it. Nevertheless, a few observations may be allowed; for if really Lord Russell was innocent, and if the witnesses were perjured, known to be so, and su-

* Constitut. Hist., iii. p. 209. Yet Lord John says, the charge was *unfavourable* to him, though not violent. If Lord John, by *unfavourable*, means that any thing was strained beyond truth and reason to convict him, we find him here contradicted. If it was *unfavourable*, it was because upon the evidence it could not be otherwise.

borned, his life was sacrificed, and himself, what (in the spirit of party, not reason,) he is now always called, a victim.

In order to this question, there is no need even to inquire into the reality of the Rye House Plot; meaning by that, the plot to assassinate the King at the Rye. Of this, the Chief Justice tells the jury, in terms, that he was not even accused. Rumbold, Walcot, and the rest, might, therefore, be perfectly innocent, yet the case of Lord Russell be left where it was.

I will not, therefore, go into the long examination made by Mr. Fox, as to the share of Rumbold in the plot; still less into his position, that a death-bed protestation of innocence *must* be believed. In this, we humbly think Mr. Fox as wrong as an observer of mankind, as we have endeavoured to prove him so as a lawyer. This is contradicted by the history of man; and, in the case of an atheist, or one who believes not a future state, (though we mean not to accuse Rumbold of this,) there is not even a colour for it. Nevertheless, although Rumbold might not have actually embarked in all the wild plans detailed by the witnesses, nor even joined personally in any one of them, it is difficult to acquit him of being cognizant of something of the sort, and of having even named the place as convenient for the attempt, although he may afterward have receded. How else could the rest have been acquainted with it?

However, as even the existence of the assassination plot has nothing to do with Lord Russell, we

lay it aside, as well as the examination into its reality by Lord John, as *inter alios acta*; and confine ourselves to the competency of the evidence against him on the trial.

The witnesses were three in number, — Howard, Rumsey, and Shepherd. Against the last there does not seem even the imputation of wilful falsehood; and Hallam, who has critically searched the trial, thinks all were unwilling witnesses, and might have revealed more.*

But Howard had alleged solemnly, with hands upraised, and eyes to Heaven, that, not only Lord Russell could never have been concerned, but that there was no plot at all.

Well: as was remarked by the court and counsel, people, who are themselves guilty, do not generally *proclaim* their guilt to the world; and, if they have associates, will do what they can to avert suspicion from them. Howard himself says, no more than naturally, that, not thinking he would be called upon in court, he was “to outface the thing both for himself and his party.” †

But to whom, and how, did he make his declarations? Not to Russell, not to Sidney, not to Monmouth, not to any of the Council of Six, for they would have laughed at him; but certainly to many of their friends, who, he saw, were alarmed for them. Suppose he had done so before the privy council *at*

* This indeed clearly appears from the examination of Carstairs; *supra*.

† Trial of Lord Russell.

first, with a view to save them and himself, if he could; and then afterwards discovered what he knew! Would this have destroyed his competency, or even his credibility? Would it have been more than natural in an accomplice, more than what Lord Russell himself did on his trial, when, to save his life, he disguised the truth? Howard did no more.

But Howard was a man of bad repute. Lord John builds much upon Lord Russell's aversion to him; and very much upon the King's having, in the presence of a messenger of Monmouth, who took him some letters, shown anger at his keeping such company as Howard's, observing, "that he would not hang the worst dog he ever had on his evidence."

This is on the evidence of one Anthony Row, (Monmouth's messenger,) taken before the Lords *after* the Revolution. Is it not remarkable, that when pity and veneration for Lord Russell, and indignation at his fate, were at the highest, just after his fall, no one ever heard of this Mr. Row, or the King's exclamation? Are we at all acquainted with the character of Row himself? And is it not wonderful, with this notorious bad character of Howard, and particularly Lord Russell's aversion to him, that he or Monmouth should have allowed him to make one of only six persons out of all the discontented in England, who were conducting, or at least planning an enterprise of such fearful magnitude, that the least indiscretion, much more perfidy, would prove the destruction of them all?

With submission therefore,—though it is no more than natural for Lord John to urge these circumstances against one of the chief witnesses adverse to his ancestor,—his objection totters on the face of it. But grant that Lord Howard is blackened from head to foot, and that having confessed himself an accomplice, he disclosed the treason of another to save himself, will this *prove* that he swore *falsely*? Did his being promised his life if he told what he knew, imply that he was obliged to tell what he did not? Had the promise been contingent on the *conviction* of Russell, the argument would have been sound. As it was, it was properly answered by the court who established his competency, leaving his credibility to the jury, whose province it was.

But then he was an accomplice!

That, too, was properly answered. Who, particularly in crimes of so secret a nature as the conspiring treason, could ever be condemned if the testimony of accomplices was not to be allowed. It was pointedly observed, that then any man might conspire with certain impunity, for if the conspiracy succeeded, of course he would be safe, if not, he could scarcely be convicted.

But far from being new, is it not every day's practice? How many villains, how many murderers, have only been brought to punishment through the evidence of accomplices?

It is right, indeed, that collateral evidence should be taken in support of the oath. But even the want

of that will not disqualify. Was there no collateral evidence in this unhappy case? No meetings? No intercourse with Shaftsbury? No sending to Scotland for men of absolute confidence?

Upon the whole, though Howard had been worse than he was, he was legally producible; and, all other circumstances compared, the jury thought him credible.

All this reasoning applies in stronger force to Rumsey, the other witness; because before, and till long after the trial, he had a fairer character. Afterwards, on the trial of Cornish, he swore things contradictory to what he swore on the trial of Russell. He was therefore perjured in one or the other. Mackintosh, however, in his reasoning upon it, shows that the perjury was against Cornish, not Russell. "The scandal (of the latter trial)," says Sir James, "was so great, that the King was obliged in a few days to make tardy reparation for the precipitate injustice of his judges. The mutilated limbs of Cornish were restored to his relations; and Rumsey was confined for life to St. Nicholas's Island, at Plymouth."*

This reasoning, also, is adopted by Lord John; and what does it amount to? That Rumsey was perjured on the trial of *Cornish*; and the proof of it, that he was NOT perjured on the trial of *Russell*.

With this we conclude a disquisition which has been necessarily, (and, would we could not say, tedi-

* Hist. of Revolut., i. 200.

ously,) long. We have ventured it, however, because the amiable as well as honourable character of the unfortunate but noble subject of it ;—his virtues, his happiness in private, and his integrity in public life ;—his probity, his firmness, his sincerity, atoning (if any thing could atone,) for his bigotry ;—render him no common person in the story of his times. Add to this, his religious resignation, as well as philosophical calmness, in his last moments ; the consideration of his illustrious birth, and the high place from which he fell, hazarding and losing it for the sake, as he supposed, of his oppressed country ;—all this makes him, what I have called him, one of the favourites of history. It is this, rather than any brilliancy of parts, or even sagacity of understanding, in which he seems to have wanted sobriety, that endears his memory to posterity, and makes his errors forgotten. He has been called, and thought, a great man. How is that term misapplied by party bias ! Mr. Fox called the rash and feeble, though generous and ill-used Argyle, *great* ! Lord Russell's greatness (for in this he was really great) consisted in his refusing to preserve his life (if he *could* have preserved it, which is very doubtful,) at the expense of his principles. This, and the intense interest of his trial, generated the most important questions at the time, and have been agitated ever since with all the deepest feelings of party spirit, and all that excitement, which, carried to excess, end, for the most part, in blind enthusiasm.

This must be my apology, if, in endeavouring to sift (not, I think, a difficult, but) a much misrepresented case to the bottom, I have been anxious to leave nothing untouched, which, from the talents or learning, station or interests, of those who have applied themselves to it, seems entitled to consideration. Hence, the impossibility of compression, and the danger of prolixity.

Who may agree or disagree with me in the opinions I have hazarded, it is not easy to foresee. All that I would stipulate for is, the sincerity of my own conviction of their soundness, after a conscientious, laborious, and, I trust I may say, impartial investigation of the whole matter. I say impartial, because in surviving every person and every object that could warp my judgment, I have long taken leave of every thing like party spirit. The struggles of the world are over, and history has lost its principal charm, because unable any longer to excite to action. If I know myself, there is not a line of this inquiry which is written in any spirit but that of truth. Had I been the King I would have pardoned Lord Russell; pardoned him without the conditions he himself proposed,—of living an exile from his country. I would have trusted to his honour, to have overcome his bigotry, and remain a good subject. Such mercy would, indeed, have been twice blessed; “blessed in him that gives, and him that takes.” But I do not on that account think that he was

either a hero or a martyr; or that the law, either of treason or of evidence, was strained a single point to produce his conviction.

OF ALGERNON SIDNEY.

Of the trial of his fellow-sufferer, Sidney, very different must be the opinion. Every one who has a regard for the laws, or believes there was a breach of them in order to put even an enemy to death, must believe it one of the foulest of murders. In legal guilt they were equally plunged: in their moral intentions, totally different.

Russell was loyal to his country, if not to his King; and to that country he always wished practical good, which he would not hazard for the sake of a theory. Sidney, more rugged, more determined and stern, and less susceptible of "the soft arts of peace;" with a less stake also in the country, and, in fact, little favoured by the good fortune which attended his colleague,—was a hot, as well as visionary theorist. If he therefore was really the patriotic Englishman he is supposed by his admirers, and not a character *sui generis*, formed by himself on models not of this or that country, but after schemes of his own, we must at least allow that his notions were not those of by far the greater number of his countrymen. He suffered his theories to boil over, from what he no doubt took for the perfection of patriotism, and which he emulated, as it distinguished his prototypes (or those

he wished to think so) among the heroes of antiquity. Burnet, and his biographers, say he formed himself upon the model of Marcus Brutus; but not only Marcus Brutus was not calculated for our meridian, and would certainly not have made a good Englishman, but we look in vain for the imitation of his model during the hard and hateful tyranny of Cromwell, who had little in common with the immolated tyrant of Rome. Yet the boast of Sidney, or his friends for him, was in the well known lines he composed, after he had appeared among the judges upon the trial of his Sovereign; and though he did not sign the warrant for his execution, had boasted of it as the “greatest and bravest action that ever was done in England or any where else.”* The lines are,

“Manus hæc inimica tyrannis,

“Ense petit placidam sub libertate quietem.”

When, however, our modern Brutus came to encounter the English Cæsar, this hostile hand deadened, and let fall the sword, which, as has been well observed, “it was fated should never be brandished but against his King and the laws of his country.” He lay retired, says the same authority, “during the usurpation, amusing himself, while his country was bleeding, with visions of commonwealths and liberty, and the rights of the people, founded on Grecian and Roman story.” †

* Meadley, 85.

† See History of the Revolution of 1688, by George Moore esq., one of the few authors who seem not afraid of speaking out in regard

The prejudice in favour of this canonized person (canonized, we venture to say, more for the infamous injustice practised upon him, than any well-deserving of his own towards his country,) is so widely spread, and has ever been so uninterrupted, that most writers seem afraid even to inquire into it. He perished on the scaffold, to which he was doomed by a most scandalous breach of law, to please a profligate Sovereign, by a still more profligate judge. But, if we are not mistaken, this forms the chief ingredient of his reputation, as a lover of England, though not, perhaps, as a wild theorist in abstract notions of liberty. Had no law been strained for his conviction; had Jeffries not presided on his trial; had his jury been fair, and the evidence legal, as there can be no doubt as to the facts of the case,—what would have been his merit? Like Lord Russell, with a rashness and indiscretion, blamed by Fox and Lord John Russell themselves, and amounting to even wickedness in the opinion of Mackintosh*, he embarked in a plan of insurrection, in which, not only success was impossible, but which was not justifiable by the measures of the court, arbitrary as they were. For even our most sanguine advocates for the rights of rebellion, admit that they can or ought only to be

to the real character and life of this victim of oppression, and his own turbulency, p. 412. Yet this author cannot justly be said to be prejudiced *against* the heroes of the Revolution, for the seven signers whom Hallam only calls *eminent*, he denominates *divine*.

* Vide *supra*, for the mischiefs and miseries entailed upon a country by an ill-concerted or inadequate rebellion.

asserted when the mischiefs complained of are more intolerable than the evil to be encountered, which, here, Lord John (differing, however, as we have seen, from Mr. Fox,) thinks was not the case.*

And strange if it had been ! for we see the most deciding motive, with Russell at least, was his disappointment in not being able to carry the exclusion bill ; so that, because he could not remove a speculative, and, at worst, a future evil, by depriving the legal heir of the crown of his undoubted right, he was prepared to involve his country in all the horrors of civil war.

But fire and sword (only part of these horrors) were nothing in comparison with the theories of the theoretic Sidney. His immediate views in opposing a mere arbitrary king were nothing in comparison with the ultimate objects of his millennium,—the restoration of his darling Commonwealth, in which not one of a hundred thousand of his countrymen would have seconded him. Yet for this he is canonized ; and a late biographer and admirer suffers his partiality so to blind him, that, in adverting to the act reversing his attainder, he says, it has “ rescued his memory from the imputation of all legal and *moral* guilt.” The one is clear : for the other, we have looked through the act, and looked in vain.†

* Supra.

† See the Memoirs of A. Sidney, by Mr. Meadley, a compilation of research and interest.

How well he really loved his country in comparison with his theories, may be gathered from two circumstances, not generally, or sufficiently, I think, adverted to by those whose object is not party victory, but historical truth. In Burnet we have the following, apparently, unimportant, but really (with a view to our subject) most momentous, because most characteristic, narration.

“Algernon Sidney, and some others of the *Commonwealth* party, came to De Witt, (during the first Dutch war,) and pressed him to think of an invasion of England and Scotland, and gave him great assurances of a strong party; and they were bringing many officers to Holland to join in the undertaking. They dealt, also, with some in Amsterdam, who were particularly sharpened against the King, and were for turning England again into a commonwealth.

“The matter was for some time in agitation at the Hague; but De Witt was against it, and got it to be laid aside.” Why? Because, among other topics, he said “there was no reason to think that, while the Parliament was so firm to the King, *any discontents could be carried so far as to a general rising*, which these men undertook for. So he said, what would be the effect of turning England into a commonwealth but the ruin of Holland? Therefore all that he would engage in was to *weaken* the trade of England, and destroy their fleet, in which he succeeded the following year beyond all expectation.”*

* Burnet, i. p. 226.

This was all very wise, and very legitimate of De Witt, as a Dutchman at war with England; but what shall we say to the virtuous, patriotic, and disinterested Algernon, so ready to lay his head on the block in the *good old* cause, the cause of his country? What to his associates, equally virtuous and patriotic with himself, for courting a man's assistance to invade their native land, and even listening to him when he tells them, all he would undertake would be to weaken her trade and destroy her fleet!

Take the continuation of the picture from the same painter.

“The busy men in Scotland,” proceeds Burnet, “being encouraged from Rotterdam, went about the country.” To do what? Join in a magnanimous resistance of a cruel and unbearable oppression, which all men felt? Arm in defence of laws which had not then been invaded? No.—Oppression, or any strong breach of law, had not then occurred; nor was there then any general loud complaint against the restored monarch. But no matter; these patriots thought the country *ought* to be discontented as well as themselves, because they had a king, and not a commonwealth; and they therefore, says the reverend historian, “*went about* the country,” (*too quiescent*, it seems, for them,) “to *try if* any men of weight would set themselves at the head of their designs for an insurrection.” *

* Burnet, i. p. 226.

And this is virtue, this patriotism, this Algernon Sidney, and the good old cause!

Well, what was their success? "The Earl of Cassilis and Lockhart were the two persons they resolved *to try*." The sense, then, of discontent, and of the invasion of liberty, even in these two, was not clear, or known; they were only to experiment upon it, with a *view to civil war*. I think this, in such a state of things, very blameable. Mr. Fox probably would not. "We have seen that," observing of Russell and Sidney, "that there was unquestionable reason to believe that they had often met and consulted, as well for the purpose of ascertaining the means they *actually* possessed, as *for that of devising others*, for delivering their country from the dreadful servitude into which it had fallen;" He adds, "and thus far their conduct appears clearly to have been laudable."*

The "busy men in Scotland, therefore, who went about the country to *try* to raise rebellion, no doubt thought themselves justified in doing so, by these principles of Mr. Fox, for they were only devising *other means*, in addition to those they already possessed for what they naturally called *delivering* their country.

Strange that such patriotism should not succeed, and that revolt should not follow the held up finger of Sidney. But Lord Cassilis had promised the King to engage in no plots, and, like a gentleman, though,

* Fox, p. 50.

if we may believe Echard*, unlike Sidney, kept his word. "So he did not suffer them (the *experimenters*) to come so far as to make him any propositions. Lockhart did the same, and they seeing *no other person that had credit enough* in the country to bring the people about him, gave over all projects for that year."†

Here is there not an exact picture of patriots run mad, either from visionary theories of the rights of man, or the vanity of supposing they know better than others what is good for them? What right had these busy Scotchmen to run about the country preaching rebellion, and *trying* who would listen to them? What right had Sidney, because he had dreamed himself into the character of Marcus Brutus, to press on the miseries of an invasion against his country, with a view to alter a constitution with which it was content? Had De Witt hearkened to him, all the blood that would have been shed would have been upon his head, and millions might have execrated a name, which, from the fortuitous circumstance of his own personal wrongs,—not his personal merit, or benefactions to his country, is now so consecrated to fame.

The same extravagance as to his theory, accompanied by the same indifference to his country's safety,

* Upon receiving his pardon or safe conduct, whatever it was, to return to England, Echard says he gave repeated promises of quiet and obedience.—Echard 697, quoted in Gen. Dic.

† Burnet, i. 227.

or his country's honour, is displayed in another transaction, not generally noticed by those who are disposed to talk of him with triumph.

It appears from a letter of Barillon preserved in Dalrymple, that in 1680, (be it observed, some three years after he had received security from the King to remain in England unmolested, upon promise of obedience,) Sidney urged the French King to aid the establishment of a commonwealth; that is, to overturn the government of England. For what reason, except to serve his own theory, or his own interest, it would be difficult to say. For at that time, though the natural profligacy of Charles had shown itself, Heaven knows, in abundant proofs, none but a man maddened with the rage of a sect, could hold that rebellion, not merely against the person, but the office of the King, had become justifiable. Even Fox, and Mackintosh, one of whose great heroes Sidney was,—even Price, the modern Hugh Peters, would scarcely go so far as this. Yet such, it seems, was the opinion of this great patriot; and mark for what patriotic reasons, addressed, be it observed, to the government of Louis XIV.

“It is the interest,” he says, “of the French monarch to forward the establishment of a *republic* in England.”

This, of itself, was iniquitous in the greatest degree, whatever glosses may be put upon it by his brother visionaries of modern times. For why millions of men, who wanted no such change, were to

be exposed to the miseries of a civil war, because a single, or a hundred philosophers of reform,—even were they all Brutuses, thought fit to prefer a particular constitution, I think, of a rational creature I need not ask.

But what are we to think of the arguments of this *Englishman*, by which he sought to influence a French King to turn England into a republic? “The monarchy,” he says, “might have the Prince of Orange at its head, and thereby connect England and Holland. Further, such a monarch *would consult the interests and inclinations of his subjects*, and call forth their best energies. England would rise the proud magnificent rival of France. But let the French King give her a republican form of government, and she will sink into an insignificant commercial state, and French ambition encounter no opposition.”

On these terms, says the author from whom I make this extract, was Sidney content to purchase his darling republic. Such was his regard for the independence of his country.*

Now, if this account is true, if ever Sidney wrote such a letter, who will not scoff at his patriotism, or English feelings? Who not say, that, provided no law had been broken to effect it, he deserved the block, by which he perished? All his great qualities (and he had some very great ones) will not shield him from the detestation of thinking men among his countrymen. He deserved attainder a thousand

* Moore's History of the Revolution, p. 44.

times more than Strafford; and the infamy of Charles II., in betraying his country to France, is fully equalled.*

These measures, however, in regard to the invasion of his country by foreign powers, have received something, in shape at least, like apology. There have been illustrious exiles, it is said, who have sought to restore the liberties of a country, and deliver it from oppression through the means of a foreign force; and the examples of Thrasybulus and Canon have been vouched by Mr. Meadley; to which he might have added, in modern times, the invasions of France by a very honourable body of men, the emigrants, who certainly wished not to destroy, but restore their country. He might, also, have enlisted on his side the many invitations of the Jacobites, in England and Scotland, to France, in the eighteenth century.

None of these cases, we think, apply.

Thrasybulus delivered his country from the thirty tyrants imposed upon it by a *foreign* conquest, under whose yoke it actually was; and which yoke, not its ancient constitution, it was his object to destroy. Canon engaged a foreign (the Persian) force to

* Mr. Meadley makes no mention of this transaction. Perhaps he knew not of it; or, if he did, disbelieved it; or thought, as he seems to do of the money said to be taken from France, that it was a forgery of Barillon. If he knew or believed it, he never would have said as he does in his preface, "His (Sidney's) conduct is held out to ingenious youth as an example of pure and disinterested patriotism."—Pref. p. 8.

assist, not to destroy his country, which had been already conquered in war by another state, from which he attempted to release it. The emigrants of France had never acknowledged the Revolution which forced them to emigrate. They had never put off their hostile character, and had a right to make war themselves, and, of course, join the standards of other hostile powers.

To assimilate these cases, we ought to suppose that Charles had never been received by the universal consent of the nation; that the constitution had not been restored; and that England never had been at peace. What is still more decisive; we are to consider the reasons actually assigned for the conduct pursued by Sidney, which were not so much founded on flagrant invasions of liberty, which he wished to resist, *preserving* the constitution, as the destruction of the constitution itself, because he fancied another. Mr. Meadley, indeed, almost reduces the defence of this bad conduct to a sense of private wrongs. Sidney had been persecuted at home and abroad, and "in these circumstances," says his apologist, "had recourse to the enemies of his country, from whom alone he could expect either favour or protection."*

Favour or protection he had a right to seek; but would that justify his urging an invasion of his country, with a view to overturn its laws? What was it that stamped indelible disgrace upon Bolingbroke,

* p. 142.

but his sacrifice of public duty to private feelings? "My attainder," said he, "tingled in every vein." Hence, he became minister to a Prince, his country's enemy, whom he would have otherwise abjured.

Mr. Meadley, however, seems to think private wrongs will justify public treason. "The proceedings of the court," he says, "had loosened every moral tie."

Suppose it had; would that have justified an attack upon the lives and properties of the people? But even these proceedings, bad as they were, had not then (1665) assumed that character of tyranny which, in some minds, (those of Fox and Mackintosh,) would have justified the insurrection projected by Sidney; whose *private* wrongs at *this* time were the sole excuse for his conduct.

"In seeking to retrieve his *ruined fortunes*," says his biographer, "and to put an end to the oppression (not of his country, but) of his friends and party, by the means of a foreign invasion, he only followed the examples which all ages, and all nations, have presented, amongst exiles of distinguished fame. And though their prudence may be fairly questioned, their patriotism cannot reasonably be impeached." *

According, therefore, to Mr. Meadley, to retrieve a ruined fortune, will justify treason. Where are these justifications to stop?

As to the assertion respecting exiles, the fact may be true, but not the conclusion. Mr. Meadley is

* Meadley, p. 142.

not to be told, that of all defences, the “*defendit numerus*” is the least defensible. What code of morality could stand? What wickedness, somewhere or other, not be justified, if example is to do it?

But, even, is the example relied upon so universal as to be without brilliant exceptions? As the immaculate Sidney was so fond of modelling himself on antique specimens, would he not have done better to have copied Themistocles than Coriolanus? With a thousand times more personal wrongs than the English republican, (who, indeed, had not one,) the Athenian chose to undergo voluntary death, rather than bear arms against his country. Mr. Meadley, as an historian, ought to have recollected this, as well as the answer given by a man who knew no theories, but of honour, to the rebel who pitied him in the arms of death:—“*Il n’y a point de pitié pour moi, qui meurs en homme de bien; il faut avoir pitié de vous, qui portez des armes contre votre prince, votre patrie, et votre serment.*”

Mr. Meadley should have recollected this brilliant trait before he ventured the excuse he does for his hero; but Sidney, though he might be a knight sans peur, was, according to our view of him, not sans reproche. He might be a Bourbon, but certainly not a Bayard.

We come now to another branch of the enquiry into the real virtue and real love of country which were supposed to illustrate this great idol; for it would be impossible not to notice the severe incul-

pation attempted to be fixed upon him by some, and the overstrained defence of him against it by others, which form one of those problems in history which it is difficult to solve. The reader anticipates the charge of bribery by French money,—the consequence of Dalrymple's publications of the various documents he found in the Scots College at Paris.

I shall not, nor is it necessary I should, go minutely into this question, though of sufficient importance, because few of those who are most convinced of the actual receipt of the money from Barillon profess to believe, that it was for any purpose inconsistent with what he *thought* his duty to his country, *according to the view he took of it*. He might, indeed, have taken it, with a view to thwart or distress the King; but that, with Mr. Fox, Sir James, and all who hold that a right of war had accrued to his subjects, would be heroic virtue, not meanness.

Mr. Meadley, of course, leans this way, when he says, “if he received the money, it was doubtless for some *public* purpose, as he is understood to have made occasional disbursements among his own inferior partizans. Even on this less probable view of the subject, his character may be free from stain, *unless it* be received as an indisputable maxim, that in resisting the oppression of an arbitrary government, it is immoral to accept of foreign aid.”*

Now, it cannot be too often impressed, that it is dangerous to be always flying to extreme principles

* Memoirs, p. 179.

to justify doubtful acts. We here, again, see an instance of it; for unless, upon every act of oppression, (I might almost say, every unpopular act,) rebellion is to follow, this defence of accepting foreign aid, to cause revolt at home, will not hold. The whole reign of Charles was bad; but, to justify revolt, it ought to have been more than bad; it ought to have been so intolerable, as to despair of remedy. Mr. Meadley is bound to show that this was so in 1678, 1679, and 1680, when this money was given. But though there had been much wrong, none of the great acts of tyranny had then been committed. The great oppressors (and bloody they were) were the authors of the Popish Plot; the great cause of misery, that they could not carry the Exclusion Bill. Will this justify Sidney in taking money to create rebellion? If he did so for that purpose, we have no scruple to say, he ought to have lost his head long before he did.

Be this as it may. Of the meanness of a mere bribe, all must at least *wish* to acquit him; for his faults were chiefly those of pride, and a ruggedness of temper, which partook of anything but a love of money; still less, of a proneness to sacrifice any principle for the sake of it. Nevertheless, the simple fact of the transaction is a matter of evidence, whatever its character; and this evidence, I know not that we can rebut. There must at least be better proof against it, than the mere opinion set up, of the roguery of Barillon, without any support whatsoever, but

that he was a Frenchman, and *might* have kept the money himself. This is all that is really offered for it by Lord John Russell, Mr. Meadley, or others.

Mr. Meadley, holding a brief for Sidney, says, and truly, that the credibility of a single witness turns on the character and situation of the party. He adds, strangely, that he does not dispute the *general authenticity* of Barillon's statements; "but his fidelity may be *fairly* questioned in a case where he was doubly interested to deceive."* This double interest is, that he might wish to enhance his importance with his master, and rob him of his money.

Admirable opinion of mankind! most correct moral code! Why, if this were true, no ambassador could ever be employed, for he never could be believed; no servant ever trusted, for he might always be tempted to steal.

It is no pleasure to think that Lord John Russell has adopted this line of reasoning. He is a secretary of state. What would he say to Mr. Meadley, if he should attack him thus,—“You have had the disposal of secret service money, and it may fairly be inferred that you pocketed it yourself?”

The proof? That it is every body's interest to steal when he can do so without discovery; and you *might* have done so.

Mr. Meadley would not say this; but who is to answer for another, if his principle is sound?

Where, indeed, evidence is obscure, or doubtful, or parts of it are flatly contradictory to each other, cha-

* Memoirs, p. 178.

racter may fairly be resorted to. But here not only the evidence is all on one side, positively and clearly asserted by the ambassador of France, and not contradicted; but I see no reason, except what is drawn from our national and very vulgar prejudices, why a French nobleman is not to be believed as well as an English gentleman. Monsieur Barrillon asserts the fact, and states it in his accounts to his sovereign, who might easily have ascertained their falsehood, if falsehood there was; the parties receiving being all alive. But Barillon does more. In the history of this scheme of bribery, (if that is it's character,) he tells you where he failed, as well as where he succeeded. He failed with Lord Russell and Hollis; he succeeded with Sidney and Powle.* If he was dishonest, and masked his dishonesty with a false account of Sidney, why stop short, and be honest as to Russell? The character for honour was as unblemished in the one as in the other, and both became equally incapable of detecting him, for both were dead.

But the *assertion* that Barillon *might* have swindled his master is supported by his being rich, and it is particularly proved by a letter of Sevigné, in which she says, "Barillon a fait ici un grand séjour: son emploi est admirable *cette année*. Il manquera cinquante mille francs; mais il sait bien où les prendre." After his final return (from England) she says, in

* Speaker of the "spurious and motley," who called and believed themselves the House of Commons, and invited King William to assume the administration. Vide supra.

another letter, "Monsieur B. est riche." And why not? Are there not honest as well as foul ways of growing rich? It is not even stated that he was not always rich; or had grown so, suddenly and unaccountably, so as to warrant surprise at it. These letters however warrant Lord John to think they give a *strong colour* "to suspicions that Barillon exhibited false accounts and forged names to his master. For his Lordship observes that from the first letter he appears to have had a share in the subsidies granted to Charles."

Now, without, in the first place, asking Lord John whether he had ascertained what time was meant by *cette année*, we might request to know how this strong assertion is proved by the premises, or by any thing adduced by his Lordship more than the possibility of it? Even fifty thousand francs do not make such a sum as would create suspicion in an unprejudiced person. "Nothing, however, was more easy," says Lord John, "than for Barillon to tell his master that he had influenced the Commons to refuse the supplies, and to have put the supposed pensions into his pocket, without fear of detection." Certainly nothing was more easy, if, according to this apparent system of ethics, all men are to be taken for rogues until they prove themselves honest. But if the contrary apothegm has sometimes been taught us in our courts and schools, how are these suspicions of Barillon proved, and, emphatically, how are they so by the letters? For it requires, with submission to Lord

John, deeper arguments than he has used, to make this out. In particular he has made one oversight, as to the first letter, fatal to the whole proposition, which it seems extraordinary that a person claiming to unravel a doubtful point in history, should have committed. For this first letter of Sevigné, on which, without even offering a reason, he grounds the suspicion that Barillon *shared* in the subsidy to Charles, is dated in 1672, whereas Barillon was *not* ambassador, nor even in England, till 1677, and the lists of the bribes themselves show them to have been given in 1678, 1679, and 1680. Exclusive of this, the system of pensioning had commenced under the preceding ambassadors. What, then, becomes of Lord John's strong colour for his suspicions? If we wanted the most powerful proof of the force and fallacy of party prejudice in an historian, we could not seize upon one more illustrative of the point than in this defence of Sidney at the expense of Barillon.*

Still, though the fact of Barillon's falsehood is by no means proved, the real intentional *corruption* of Sidney is equally without demonstration. That he took the money is asserted, and the contrary at least not clear; but as the motive alone of an action is the deciding proof of its character, we must pause before we convict him of wilful corruption. Did he

* Life of Lord Russell, i. 190. The whole money said to be distributed amounted to but 11,000 guineas in two years. Suppose Barillon had pocketed the whole, it would scarcely have supported Lord John's inference from the letters.

do any thing contrary to his conscience; any thing he would not otherwise have done, in consequence of the money, supposing it given?

We must agree, I think, with those who say no.

The difficulty is to know how, in his case, or in that of other pensioners, if they did not *sell* their votes, (that is, if their conduct would have been the same with as without the money,) how and to what purpose money could be employed?

Had an insurrection been in question, and it had been to purchase arms, the matter is intelligible. But how, if their consciences were not sold, the pensions were to benefit the payer of them, baffles conjecture. Lord Bacon said he believed he had sold justice, but not injustice. Was there any thing like this among these pensioners? But Sidney was not even in parliament, and there is no trace at the time of an intended revolt. Lord John says, no man of common sense can believe that he took the money for himself.

I know not why. For whom or for what did he take it? He had formerly owed great obligations to France. Lewis is supposed to have contributed to his support, when, from his own account, he was a destitute wanderer, without knowing where to look for existence.* He was still needy, made more so, perhaps, by generosity; for generosity he had.

Under these circumstances I see no ground for Lord John's opinion. Certainly not in one of the

* See his letters to his father in the Sidney papers.

reasons he gives for it, that he killed a fine horse rather than be *forced* to sell it to Lewis XIV., who threatened to take it from him if he did not. This was mere pride, and not disinterestedness. Pride of every sort was his constitutional character. Old Whitelocke refused to be joined with him in the embassy to Copenhagen, because " he knew well the overruling temper and height of Colonel Sidney ; he therefore endeavoured to excuse himself on account of his old age." *

That height and overrule must have been very great indeed, that made Whitelocke refuse a lucrative mission.

Upon the whole, I fear we must leave the question of the money where we found it. It is clear that Russell and Hollis refused it with scorn. It is *not* clear that Sidney did so. How he reconciled it to his conscience must for ever be unknown.

The ingratitude of Sidney to Charles the Second has also been made a question. It is certain that his character for integrity, (I do not mean honesty,) would have shone out with greater lustre, had he either never come home from his voluntary exile, or had never plotted against the person whose pardon he had accepted.

Lord John disputes the propriety of the word, and, technically speaking, he may be right ; for I believe there is no record of a pardon in form having passed the seal. Nevertheless, his representation of the

* Whitelocke, p. 681.

case between Sidney and his King does not seem strictly correct. "He was not," says Lord John, "excepted out of the act of indemnity, and had he come over immediately afterwards, he could not have been prosecuted or *imprisoned* without a breach of law and justice." *

This is true. But he did *not* come over, for among other reasons, both he and his friends for him were afraid to trust the government to which he had made himself wantonly and personally hateful. It was not *merely* then, as has been said, that he despised all who submitted. Without waiting a moment to ascertain the real situation of his country, or make trial of the restored monarch, with his usual violence, (mixed, as we have observed, with not a little fear,) with a fury against all forms of government, and all governors who did not come up to his own notions (Whitelocke would say, "his height and overruling temper,") he chose to throw himself away under pretence that his country was not good enough to receive him. He therefore wrote a passionate letter to a friend, who advised his return, which Meadley says would have done honour to the noblest characters of Greece and Rome.

Without enquiring who are meant by these noblest characters, most of whom, after the times came when they were able to write their names, were a set of self-interested ruffians, it is certain the letter breathes a very exalted spirit, and were it not stained by a violence both unexampled and unjustifiable, of

* Life of Lord Russell, i. p. 198.

exaggerated prejudice, and not a few *personal* feelings, it would command our unqualified respect. As it is, it is the most unmixed as well as the strongest testimonial of that height of mind which belonged to him, but which, having little real philosophy to temper its rage, was the cause of much calamity both to himself and his country. Indiscriminate abuse both of the times and the actors in them, the consequence of bitter disappointment, forms much of the character of this patriotic letter. Such a worthless weathercock as Lambert,—such a zealot as Vane,—such a miserable enthusiast as Haselrigg, are heroes with him, whom but for their rage in common with him against kings he must have utterly despised. The military activity of Lambert might have commanded some attention from him; but of all men, from his own decided cast of thought, he must have laughed at the crackbrained enthusiasm of Vane, and spurned at the despicable capacity of Haselrigg. Yet of these men he says, “Where they cannot live in safety, I cannot live at all; though they may be the first, as *being more eminent* than I, I must follow their example in suffering, as I have been their companion in acting.” *

In another part, evidently stung with the restoration of the King, whom, and his ministers, he at least *prematurely* abuses, he bursts out with this invective: “Perhaps they may find the *King's* glory is *their* shame; *his* plenty, the people's misery; and that the

* Letter without date or superscription, quoted in Meadley, p. 81.

gaining of an office or a little money, is a poor reward for *destroying* a nation, which, if it were preserved in liberty and virtue, would be truly the most glorious in the world.*

Well, this is true, and equally so that its virtue and liberty were afterwards little consulted. But, exclusive that its liberty was fully as much trenched upon by the Popish Plot parliament, with Russell at its head, as by the King, what right or reason had Sidney, except what was drawn from his own sourness and inveterate prejudices, *then* to calumniate the King and his ministers? "The honour," he says, "of English parliaments has ever been in making the nation glorious and happy, not in selling and destroying the interest of it to satisfy the lust of one man. Miserable nation! that from so great a height of glory (we suppose he means the glory of the Rump) is fallen into the most despicable condition in the world, of having all its good depending upon the breath and will of *the vilest persons in it*, cheated and sold by them they trusted. Infamous tarffick! equal almost in guilt to that of Judas."†

This eloquent heat is, I suppose, what Mr. Meadley thinks renders Sidney equal to the heroes of Greece and Rome. In excitement it may be so, but if we calmly look at the names of the majority of the counsellors of Charles, whom he thus designates as the vilest persons in the nation, and find among them those of Clarendon, Southampton, Ormond, Holles, and

* Meadley, p. 80.

† Id. p. 80.

Delamere: if we do not altogether disagree, we may come to the conclusion that his judgment was perverted by his passion, which indeed seems to have been the prominent part of his character through life.

By cheating, and selling, and infamous traffick, however, he probably alludes to Monk and the other contributors to the Restoration, who had repented of the confusion and overthrow of the laws which they had occasioned. Yet to Monk's interest to make his peace and promote him, his father at least did not disdain to apply. Whether he would have refused to profit by it, if employed, was never ascertained, for it was refused on account of his personal violence and voluntary revilings of the King. Hence, probably, in lamenting the fate of Vane and Haselrigg, he was not at all unmindful of his own. Lord John says, however, that he could have returned with safety. The question is what he thought of it himself? I am not therefore one of those (Hume among them) who say that he chose *voluntary* banishment rather than submit to a government and family which he *abhorred*. These words are true, but they would have been more true had the word *fear* been added to them. This is so far of consequence as it tends to the elucidation of the only object we have in view, the real character and motives to action of this, in many things admirable, but, in English history, we think too much admired, person. Fear, then, or rather apprehension of severe prosecution, (for I do not mean want of personal courage,)

had as much effect as rage and contempt in making him renounce his country. So far, therefore, his conduct was not altogether heroic. But if violence, if abuse, extreme anger against all governors except those after his own fancy, if to call his restored King a bandit, though it subjected him to ruin, can prove him a hero, or that he possessed either supereminent sense, or supereminent virtue, he certainly deserves the rank which Mr. Meadley would assign him.

Those, however, who think that more calm convictions, as well as more sober conduct, would have raised him higher in our estimation, will not quit their opinions, from the mere circumstance that he was illegally put to death for acting up to these his exaggerated principles.

Lord John quarrels with Hume for accusing him of ingratitude and breach of faith, in applying for a pardon, and immediately after entering into plots against the government. From this, it should seem, Lord John thinks he owed *nothing* to the King, for he says he might have returned to England without a passport.

Yet, in the same breath, he says, such was the state of the law, so little was it a protection, that he could not rely upon it without the *additional* favour of the court.* This favour he obtained, and, as Echard (before quoted) remarks, upon promise of obedience and abstaining from plots. He there-

* Life of Russell, i. p. 199.

fore stands confessedly convicted of ingratitude and breach of faith, and Hume is vindicated.

But, far more than this, was nothing to be guarded against but the *uncertainties* of the law? Were there not *certainities* still more fearful? The illustrious exile, during his self-banishment from disgust, had been a little more than disgusted. He had been guilty of high treason in adhering to the King's enemies during the Dutch war. This he did when he joined De Witt, as above related, counselled him to invade the kingdom, and promised him the support of a band of rebels like himself. And for what were these people rebels? For the interests of their country, or because of oppression? No. Oppression (in 1665) had then but little shown itself. It was their own interests, their own revenge, that prompted them. Ludlow had lost his command; Sidney his embassy; both their power. The revered old constitution was hateful to them; they wished again for the moderation, equity, and *appointments* of the Long Parliament; and for this, to which their theories of government exquisitely conduced, they were ready to have drenched their country in blood. Had Sidney never been heard of afterwards; had he never perished unjustly on the scaffold, (unjustly, not because he was innocent, but because the law had been perverted to destroy him,) where would have been his fame?

But to return to his new treason with De Witt. There can be little doubt that it must have been

known to the government, for Burnet, we see, relates it. That he was conscious himself, not only of the fact, but of its consequences in law, can be still less disputed. Was it nothing, then, to obtain an amnesty from the King, not only in regard to all his treasons against his father, (from which, notwithstanding the act of indemnity, Lord John owns he had but little protection,) but also those more glaring, more indisputable, and more recent ones, which he had practised against Charles himself? Lord John really seems spell-bound by his party; he would not otherwise hazard so many inconsistencies and errors in reasoning in defence of a man who might really have been the great person he has been thought, but that he was for ever turbulent, for ever moody, and never to be wrought upon, by either favour or benefits, if thwarted in bringing his dangerous theories into practice. In these theories rhapsody presided, quite as often as reason.*

This attachment to his speculations, and impatience of opposition to them, are not ill described by Burnet himself. "He was," says the Bishop, "a

* What are we to say to his positions, that, by the law of God, a master has power of life and death over his servant; that the King is not King till he is crowned; that that which is not just, is not *law*, and ought not to be obeyed; meaning though enacted. (This, however, was preached in the senate by Mr. Fox, when he reduced obedience to mere prudence.) Lastly, that the right of dissolving parliament is not simply in the King. The use intended to be made of the first proposition is evident, because kings of course are servants, and the people masters, who may of course kill their kings whenever they please.

steady man, even to obstinacy; sincere, but of a rough and boisterous temper, that could not bear contradiction. He was stiff to all republican principles; and such an enemy to every thing that *looked like monarchy*, (was he the more praiseworthy for this?) that he set himself in high opposition against Cromwell when he was Protector."

Of this last assertion I have not been able to find the proof, though Hume repeats it; and it should appear, that, if not awed by the superiority of Cromwell, who would have made him feel the weight of his arm had he stirred, he at least thought it as well to remain safely in the retreats of Penshurst, though not quiet even there. For his elder brother, Lord Lisle, complains indignantly of the disturbance, even in mere house arrangements, which was given him by a younger son. The account is characteristic, and little creditable either to his temper, his moderation or his modesty; though very much in unison with the real spirit of republicanism, which is invariably so far ambitious as never to be content with a second place. The trait appears trifling, "*sed hæ nugæ seria ducent in mala.*" His after-life partook of the colouring of this trifling trait.*

* "In earnest", says Lord Lisle, (who himself seems a little of the same breed,) writing to his father, "I think, laying all other matters aside, this which hath happened most eminently on this occasion, is very extraordinary; that the *younger* son should so *domineer* in the house, that not only in regard to this matter which I have spoken of, but *at all times, I am uncertain whether I can have the liberty to look into it or no.* For it seems that it is not his chamber, but the *great room*

That he sometimes was not a more dutiful son than a complaisant brother, is, I fear, too certain; at least whoever reads the pathetic letter of his father to him, of August 1660, may not uncharitably form that conclusion. Lord Leicester begins thus:—

“To the Honourable Aulgernon Sidney.

“Disuse of writing hath made it uneasy to me; age makes it hard; and the weakness of sight and hand makes it almost impossible.

“This may excuse me to every body, and particularly to you, who have not invited me much unto it; but rather have given me cause to think that you were willing to save me the labour of writing, and yourself the trouble of reading my letters.

“For after you had left me sick, solitary, and sad at Penshurst, and that you had resolved to undertake the employment wherein you have lately been*, you neither came to give a farewell, nor did so much as send one to me, but only writ a wrangling letter or two about money.

“And now I am again upon the point of retiring to my poor habitation; having for myself no other design than to pass the small remainder of my days

of the house, and perhaps *the whole*, he commands; and on this occasion I may most properly say it, that his *extremest vanity and want of judgment* are so known, that there will be some wonder at it.” (Letter preserved at Penshurst, and published by Mr. Meadley. *Memoirs*, p. 316.)

* Ambassador to the northern powers.

innocently and quietly ; and, if it pleases God, to be gathered in peace to my fathers.

“And concerning you, what to resolve in myself, or what to advise you, truly I know not ; for you must give me leave to remember, of how little weight my opinions and counsels have been with you, and how unkindly and unfriendly you have rejected those exhortations and admonitions which, in much affection and kindness, I have given you upon many occasions, and in almost every thing, from the highest to the lowest, that hath concerned you ; and this you may think sufficient to discourage me from putting my advices into the like danger.

“ Yet somewhat I will say ; and first, I think it unfit, and perhaps as yet unsafe, for you to come into England ; for I believe Powell hath told you, that he heard, when he was here, that you were likely to be excepted out of the general act of pardon and oblivion ; and though I know not what you have done or said here or there, yet I have several ways heard, that there is an ill opinion of you, as of any, even of those that condemned the late King.

“ And when I thought there was no other exception to you, than your being of the other party, I spoke to the General* in your behalf, who told me that very ill offices had been done you ; but he would assist you as much as justly he could.

“ And I intended then also to speak to somebody

* Monk.

else ; you may guess whom I mean ; but, since that, I have heard such things of you, that in the doubtfulness only of their being true, no man will open his mouth for you.

“ I will tell you some passages, and you shall do well to clear yourself of them.

“ It is said that the University of Copenhagen brought their *Album* unto you to write something therein ; and that you did *scribere in Albo* these words,

“ Manus hæc inimica tyrannis,

“ Ense petit placidam sub libertate quietem ;”

and put your name to it.

“ This cannot but be publicly known if it be true.

“ It is also said, that a minister, who hath married a Lady Lawrence here at Chelsea, but now dwelling at Copenhagen, being there in company with you, said, ‘ I think you were none of the late King’s judges, nor guilty of his death ;’ meaning our King. ‘ Guilty !’ said you, ‘ Do you call that guilt ? Why, it was the justest and bravest action that ever was done in England, or any where else ;’ with other words to the same effect.

“ It is said also, that you having heard of a design to seize upon you, or to cause you to be taken prisoner, you took notice of it to the King of Denmark himself, and said, ‘ I hear there is a design to seize upon me ; but who is it hath that design ?’

“ Est ce notre bandit ?”

by which you are understood to mean the King.

“ Besides this, it is reported that you have been heard to say many scornful and contemptuous things of the King’s person and family, which, unless you can justify yourself, will hardly be forgiven or forgotten; for such personal offences make deeper impressions than public actions, either of war or treaty.” *

Is not this as plain sense, as touching complaint and admonition? The lesson it gave was forcible, in this, that rage and personal abuse against our superiors are by no means necessarily what they may be taken for, — courage and patriotic virtue. That it should have an effect upon him, particularly in his exile, when he fell into want, cannot surprise us; and several of his letters indicate much compunction at being shaken from his father’s esteem and affection. They do more; they show so much that is amiable every way, that when we think of the wreck of it, occasioned by his prejudices and self-delusions, we only the more feelingly exclaim,—

“ Oh ! what a noble mind was there o’erthrown.”

Mr. Meadley seems to think these anxieties to be restored to his father’s good opinion *meritorious*. Is it, then, meritorious to neglect a father in his age; and when reproached by him for it, not to be indifferent? Alas ! what does it prove more than that his feelings were not altogether hardened, nor absolutely destroyed, by his principles? Even while submitting

* Meadley, Appendix vi.

to his parent, he breaks out into something like reproach and sauciness, and certainly a high presumption of superiority in himself. "If," says he, "there be no reason for allowing me any assistance out of the family, as long as there is a possibility for me to live without it, I have discharged you. If those helps are only to be given to those that have neither spirit nor industry in anything to help themselves, I deserve none. *Or, if supplies are only the rewards of importunity, or given to avoid the trouble of being solicited, I think I shall for ever free you for that reason.*"

This is at least disrespectful, if not insolent language, and more like a self-sufficient grumbling boy, endeavouring to bully his parent, than the dutiful representation of a son of such a father. A son, too, at full maturity, and who had represented his country to a foreign state. But when we think, that his father was the writer of such a letter as is set forth above, who but must wonder, as well as lament, that the writer of this claims to be one of the idols of England?

His family friendships do not seem to have improved as he lived on. We have seen how he encountered the resentment of his eldest brother for insolence in endeavouring to take the command of their father's house, to his exclusion. When he returned to England by favour of the court, he twice endeavoured to get into parliament, in order to oppose it; but was twice foiled; the last time by

his other brother Henry, who obtained the seat. Thus, whether in the capacity of son or brother, he does not seem to have been too much esteemed, though, as we have often seen, this does not at all interfere with the most violent patriotism.

The displeasure against him, conceived by his venerable father in the letter that has been detailed of 1660, continued nearly the whole of the rest of his life; yet the letter seems to be written in no spirit of party, on account of his son's former conduct during the civil war. In that war, though, in the beginning of it, Lord Leicester had been appointed Lord Lieutenant of Ireland by the King, he was soon displaced; took no part, but made his peace with the parliament, and quarrelled not with his son for siding so zealously with them. But the obstinate fierceness of his personal rage, as reported to him from Copenhagen, and the violent (may we not say the brutal) opprobrium of the language imputed to him in regard to the restored monarch, whom he called "notre bandit," justly provoked his parent's anger, as it must have done that of every body else, not corrupted to the core with the insolence of democratical vanity. Do I in this expression undervalue the rights of the people? No; the real people are always honest, always estimable; nay, they are what I have never denied them to be,—the real fountain of power. But demagogues, though their leaders, or rather their drivers, (for such is the more literal meaning of the word,) are not the

people. It is they, because they have not either the humility or modesty of wisdom, who are insolent, pretending, and usurping. Such were the tribunes, the Dentati, the Saturnini of Rome.

That Sidney resembled these in every part of his character it would be gross injustice, as well as ignorance, to insinuate; but from the sketch that has been given, there are traits of likeness, which, through all the halo of splendour with which his death surrounded him, are not undiscoverable. Had it not been for that death, or rather the manner of it,—had it not been for the violent straining of the law, which converted a merited punishment into an infamous murder, and gave him ample opportunities of displaying the noble energies of his mind,—he would have been little different from other conspirators. But his injuries were too glaring, the determination to destroy him too plain, and the instruments of the wickedness too revolting, not to make every man in the nation take part in his case as if it had been his own. On the other hand, his gallant defence, his unbroken spirit, his contempt for the arts practised against him, his collectedness, soundness, and clearness in argument, although certain of death, elevated him beyond himself, and he became no longer a mere enthusiast, but a real hero. In this he was different from Russell, who only inspired his hearers with pity: Sidney his with awe. All this clothed, and still clothes him with a veneration which his life would never have inspired;

for it was in his death, not his life, that he was a hero.

It follows, that, in our opinion, had he escaped, or been pardoned, and remained, if he could have remained, in quietness, without plotting to *force* his opinions upon others, or destroy a government he was bound to obey, because he preferred another form more suitable to his theories, he probably would have descended to posterity as, what he appears to have been, a discontented, turbulent theorist; the victim of disappointed ambition; the disturber, not the benefactor of his country!

No. VII.

THE OXFORD DECREE.

“*Ecce iterum Crispinus,*” I am afraid the reader will exclaim, on seeing an additional article to this Appendix.

Nor would the subject of it, however curious as a part of the history of the times, challenge any particular investigation, but for the unfairness with which I think it has been treated by Mr. Fox.

All that is noticed by him becomes of sufficient importance, particularly in history, to be noticed by others, whether they agree or disagree with him.

In this instance, as well as in many others, where

popular doctrines are concerned, we venture to disagree with him.

That he should condemn, and even ridicule (or endeavour to do it) with bitterness, a decree condemning his most favourite tenets upon public and constitutional questions, is not surprising; no more than that he should pour out the vials of his wrath, with even unusual asperity, against men who presumed to express indignation at revolutionary doctrines, although many of them went far, as they thought, and we think, to sap the foundations, not only of the English, but of all government.

Now, we are not going to defend the wisdom of issuing this decree, although it was promulged at a time when the headlong violence of a great party in the nation (certainly not without provocation from the wickedness and corruption of the court) threatened more than what justice required, or books could prove,—a right to attempt the destruction of the monarch, and, possibly, of the monarchy itself.

All this was to be effected also by the means of civil war, and, as we shall see, from the doctrines condemned, of authorised murder.

Still, perhaps it would have been better to have answered the propositions they condemned, (and the majority of them, we think, admit of the fullest answer,) than to attempt their confutation by a display of violence, and a high tone of authority, which, when confined to mere forms and denunciatory language, lose their effect in their impotency.

But besides this, the adulatory style of the decree, which calls such a profligate as Charles II. the breath of their nostrils, is calculated to fill even Tories (at least those of the present more enlightened days) with disgust and aversion.

On the other hand, we are not to forget that this was no uncommon or exaggerated tone at the time among those with whom old custom, and an extreme deference for royalty, still continued to operate in all forms of speech. This I do not mean to defend, but only to account for it; and merely point out that in those days to use the most inflated language of flattery, whether to prince or subject, was perfectly consistent with the most conscientious as well as most rational modes of thinking.

Who can read Dryden's dedications without indignation?

On the other hand, therefore, we say, that we ought not to be so wrought upon by mere vehemence of abuse, as, without inquiry, to agree in the justice of this *general* attack of Mr. Fox on the Oxford decree.

We desire to discriminate between the good and the bad, and protest against involving all the propositions it contains in one universal sweeping execration.

Mr. Fox, or Sir James, or other champions for popular pretensions, would, in the usual popular phraseology, say, that where all are bad, it would be useless to discriminate. But is it so with the decree. Let us inquire.

Of twenty-seven propositions of which the decree consists, and which, with the books containing them, are condemned to be burnt (ridiculously according to our present sober maxims, but customary in those days,)* only three are mentioned by Mr. Fox; and their condemnation naturally draws forth all his ire, seemingly against the whole. They condemned, he says, “*every principle* upon which the constitution of this, or any other free country can maintain itself.”

“Nor was this learned body satisfied with stigmatizing such principles as contrary to the Holy Scriptures, to the decrees of councils, to the writings of the fathers, to the faith and profession of the primitive church, as destructive of the kingly government, the safety of his Majesty’s person, the public peace, the laws of nature, and bounds of human society; but—after enumerating the several obnoxious propositions, among which was one the declaring all civil authority to be derived from the people; another asserting a mutual contract, tacit or express, between the King and his subjects; a third maintaining the lawfulness of changing the succession to the crown, *with many others of the like nature*,—they solemnly deemed all and *every one* of those propositions to be not only false and seditious, but *impious*, and that the books that contained them were fitted to lead to rebellion, murder of princes, and atheism itself.†”

* How many Tory sermons were ordered to be burned by the hands of the common hangman! The decree itself underwent that fate afterwards by order of parliament.

† Hist. of James II. 56.

To doubt these propositions, still more to condemn them, was high treason in the eyes of Mr. Fox. What wonder, then, that he should, in the following sentences, indulge to the utmost stretch his indignation against those who presumed to blame them.

“Such are the absurdities which men are not ashamed to utter in order to cast odious imputations upon their adversaries; and such the manner in which *churchmen* will abuse, *when it suits their policy*, the holy name of that religion whose first precept is to love one another, *for the purpose of teaching us to hate our neighbours* with more than ordinary rancour.”*

When we come to the propositions themselves, which after such an accusation we think we are bound to do, we shall see whether it is deserved. Meantime, we may ask, why this rancorous injustice is ascribed so *emphatically to churchmen*? This we cannot reconcile either to the experience of history or the common knowledge of mankind. We at least think that party writers may rival them.

We do not, however, say it is an absolute logical conclusion that Mr. Fox meant to class, under the words “with many others of a like nature,” *all* the propositions denounced, with the three he has mentioned. Yet, as he has mentioned no exceptions, may we not fairly ask whether his language does not admit of that presumption? If so, where is the fairness of the historian in leaving it to be supposed that four and twenty out of the seven and twenty propositions were

* Hist. of James II. 56.

of the same nature as the three he has produced, without vouchsafing to give the reader the least inkling as to their contents.

We are not so unjust to Mr. Fox as to say that in his mind all these propositions were equally innocent; but as he makes no exception, as his invective is general against the decree, and all those who promulgated it, we are left to suppose that, in his mind, every part of it was equally obnoxious.

Let us, therefore, examine a little more minutely how these strictures are deserved.

We have shown in the body of this work that even the three propositions he names are by no means received by all the world as incontrovertible truths. It is by no means without modifications, and those of the first importance, that the proposition declaring all civil authority to be derived from the people is held to be true. It is any thing but an axiom *universally* and *necessarily* received.

Still less is that other, that there is always "a mutual contract, tacit or express, between the King and his subjects;" and, though the lawfulness of changing the succession of the crown, by the whole legislature, King, Lords, and Commons, may not be questionable, the right of the people to do it *of themselves*, if the lawful King is in existence, is not only not clear, but is a breach of those very principles of the constitution which Mr. Fox quarrels with the decree for endeavouring, as he says, to subvert.

So far, therefore, even the three propositions he

thinks so clear, as to found upon it his vituperation of the University for condemning them, are not universally or unreservedly acknowledged.

If we examine many, I may say most of the others, it will be difficult for Mr. Fox himself to convince any large portion of the world that their condemnation deserved (I will not say the anathema pronounced against it, but) a much less severe reprehension. It might be a fault by pronouncing public sentence upon these propositions, to bring into more notice than they themselves could have commanded glaring absurdities, or glaring wickedness, which must have been soon despised and forgotten; but this was, in our minds, the principal or sole fault of the University.

Take, for instance, the fourth proposition condemned:—

“The sovereignty of England is in the three estates, viz., King, Lords, and Commons. The King has but a co-ordinate power, and may be overruled by the other two.” (*Lex Rex. Hunton; of a limited and mixed monarchy.—Baxter, H. C. Polit. Catechism.*)

So then, according to this, the two houses of parliament, without the King, ought to make the laws.

Take also the tenth:—

“Possession and strength give a right to govern; and success in a cause or enterprize proclaims it to be lawful and just. To pursue it, is to comply with the will of God, because it is to follow the conduct of his Providence.” (*Hobbs. Owen’s Sermon before the*

Regicides, Jan. 31, 1648.—Baxter. Jenkins's Petition, Oct. 1651.)

Then, the man who murders me, having succeeded in his enterprize, has done nothing but what is lawful and just, and follows the conduct of Providence!

Also the eleventh and twelfth:—

“In the state of nature *there is no difference between good and evil, right and wrong. The state of nature is a state of war, in which every man hath a right to all things.*”

“The foundation of civil authority is this natural right, which is not given, but left to the supreme magistrate, upon men's entering into societies; and not only a foreign invader, but a domestic rebel, puts himself again into a state of nature, to be proceeded against, not as a subject, but an enemy; *and consequently acquires by his rebellion the same right over the life of his prince, as the prince, for the most heinous crimes, has over the life of his own subjects.*”

We will not affront the reader with commenting upon a line of this.

The thirteenth:—“Every man, after his entering into a society, retains a right of defending himself against force; and cannot transfer that right to the commonwealth, when he consents to that union whereby a commonwealth is made; and in case a great many men together have already resisted the commonwealth, for which every one of them expecteth death, they have liberty then to join together to assist one another.

Their bearing of arms subsequent to the first *breach of their duty*, though it be to maintain what they have done, is no new unjust act; and if it be only to defend their persons, is not unjust at all."

Had this right of resistance been held to be against unjust or unlawful force, it would have been true. But the words, *breach of their duty*, show that the force may be neither unjust nor unlawful; and yet to resist it, is not rebellion.

The fifteenth: — "If a people, that, by oath and duty, are obliged to a sovereign, shall *sinfully* dispossess him, and, contrary to their covenants, choose and covenant with another, they may be obliged by their later covenants, notwithstanding their former." — (*Baxter, H. C.*)

If this be true, what becomes of the sanctity of an oath?

The seventeenth: — "*An oath obligeth, not in the sense of the imposer, but the takers.*" — (*Sherriff's Case.*)

A premium upon hypocrisy and deceit.

The nineteenth and twentieth: —

"The powers of this world are usurpations upon the prerogative of Jesus Christ; and it is the duty of God's people to destroy them, in order to the setting Christ upon his throne." — (*Fifth Monarchy Men.*)

"The Presbyterian government is the sceptre of Christ's kingdom, to which kings, as well as others, are bound to submit; and the king's supremacy in ecclesiastical affairs, asserted by the Church of Eng-

land, is injurious to Christ, the sole King, and Head of his Church.”—(*Altare Damascenum. Apolog. Relat. Hist. Indulg. Cartwright. Travers.*)

Mere madness, but very wicked.

The twenty-third to the twenty-seventh:—“Wicked kings and tyrants ought to be put to death; *and if the judges and inferior magistrates will not do their office, the power of the sword devolves to the people; if the major part of the people refuse to exercise this power, then the ministers may excommunicate such a king; after which it is lawful for any of the subjects to kill him, as the people did Athaliah, and Jehu, Jezabel.*” (Buchanan. Knox. Goodman. Gilby. Jesuits.)

If this be true, king-murder is always virtue, and the priest the only king. Moreover, what becomes of that “damnable doctrine, that princes excommunicated by the Pope may be dethroned and murdered by their subjects,” which all good English protestants so zealously abjure? It is here established for ever.

“After the sealing of the Scripture canon, the people of God in all ages are to expect new revelations for a rule of their actions; *and it is lawful for a private man, having an inward motion from God, to kill a tyrant.*” (Quakers, and other enthusiasts. Goodman.)

Every private man is thus the master of the life of another.

Again, “The example of Phineas *is to us instead of a command*; for what God hath commanded or

approved in one age, must needs oblige in all.”
(*Goodman. Knox. Napthali.*)

Thus any man that pleases, though we no longer live under a theocracy, or have the immediate command of God, except from an inward motion, may hold himself the instrument of God’s vengeance, and murder whom he likes.

Lastly, “King Charles the First was lawfully put to death; and his murderers were the blessed instrument of God’s glory in their generation.” (*Milton. Goodwin. Owen.*)

Well, does not this, and all the rest of the propositions, uphold what Mr. Fox so reprehends,—the opinion expressed by the framers of the decree,—that they were impious, and the books containing them fitted to lead to (they might have said enjoined) rebellion, the murder of princes, and atheism itself?

Yet for expressing this opinion, among others, a Whig parliament afterwards, in its wisdom and its patriotism, ordered the decree to be burned by the common hangman.

We now, indeed, laugh at these propositions; but not so at the time of the decree, when there were almost as many *different* creeds in the science of government as there were men; and the zealots, who preached the knife on the authority of Scripture, found thousands of still greater zealots eager to obey them. Hence the opposing zeal of the University so vituperated by Mr. Fox, with what reason, the world may now judge.

Their zeal may have been mistaken, if you will. Has Mr. Fox made no mistakes?

Was he right in consigning those who condemned *such* propositions to the detestation of mankind? Has he been quite so just, so free from prejudice and passion, so clear in his *laborious* inquiry after truth, in this strange concealment of the greater part of the decree he so abominates?

But not content with holding up, not merely the authors of the decree, but the whole church, to execration, he lays down his trenchant sword, and *endeavours* also to sting them with ridicule. With this, as a matter of taste, we have no business; though the taste might be questionable.

Certainly for an historian who, it is said, was peculiarly jealous to render his history chaste and simple, so as to banish all argument of his own as extraneous interruption, the taste of introducing wit and ridicule against the heads of one of the most venerable universities in the world, (as if he were writing a political pamphlet,) might not only be doubted, but thought absolutely inconsistent with his professed aim.

With the wit itself we will not meddle, except to say, that if to condemn such propositions as we have mentioned as impious and dangerous, bears any resemblance to the assertion by two fools,—that a false accusation against a lady was flat burglary, then the comparison of the Vice Chancellor and

Doctors of Oxford to Dogberry and Verges, was wit in itself, and worthy the dignity and sobriety of history.

Mr. Fox, on a thousand accounts, was justly entitled to the admiration of his countrymen and of the world; but not, I fear, for his critique on the Oxford decree.

THE END.

LONDON :

Printed by A. SPOTTISWOODE,
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Process of Oxford to Dogbury, and I hope was
not in vain and worthy the dignity and solemnity of
the occasion.

Mr Fox on a thousand occasions was justly re-
spected to the admiration of his countrymen and of the
world: but not I fear for his election on the Oxford
stage.

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